

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114671225>

CA20N
XC21
-P73

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

MONDAY, MARCH 23, 1987

Morning Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Barlow, W. W. (Cambridge PC)
Davis, W. C. (Scarborough Centre PC)
Epp, H. A. (Waterloo North L)
Philip, E. T. (Etobicoke NDP)
Pope, A. W. (Cochrane South PC)
Sargent, E. C. (Grey-Bruce L)
Smith, D. W. (Lambton L)
South, L. (Frontenac-Addington L)
Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South
Gregory, M. E. C. (Mississauga East PC) for Mr. Davis

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor
Sciarra, J., Administrative Assistant
Mishchenko, N. J., Director, Special Assignments Branch

From the Ontario Development Corp.:

MacKinnon, D., President and Chief Executive Officer
Cass, B., Director, Legal Services Branch
Winter, R., Director, Special Financial Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Monday, March 23, 1987

The committee met at 11:31 a.m. in room 151.

GRAHAM SOFTWARE CORP.

Mr. Chairman: Come to order, please. I would like to ask representatives of the Ontario Development Corp. to come forward. Mr. MacKinnon, perhaps before you begin your statement you could identify your role and the role of your colleagues at ODC for the purposes of the record.

ONTARIO DEVELOPMENT CORP.

Mr. MacKinnon: I am David MacKinnon, chief executive officer of the Ontario Development Corp. On my left is Brian Cass, the director of our legal services branch and Robert Winter, the director of special financial services for the corporation. Both Mr. Cass and Mr. Winter have been intimately involved in this case throughout.

Absent from our meeting today is another principal participant in this case from the point of view of the Ontario Development Corp., Donald Budge. Mr. Budge was a contract employee with us for about six months. He was the president of a medium-sized steel company and he has gone out, I guess, to run another company after his short stay with us. If necessary, later in the proceedings, he would also be available to testify.

Mr. Chairman: I understand you do not have a copy of your statement to circulate.

Mr. MacKinnon: I do have copies of a set of notes I am using as I go along to form my statement, but I will be speaking from an outline rather than from a formal statement. I have the set of notes ready for distribution afterwards, if that is agreeable.

Mr. Chairman: Good. Please proceed.

Mr. MacKinnon: As committee members are aware, I have made available to the committee a full set of documents dealing with the Graham Software matter and I have indicated to your staff that our files are open to them. In addition, I have made material available to the Provincial Auditor and have had discussions with his staff, as required, during the course of his review.

Today I would like to do four things. First, I would like to summarize the facts of the matter as they appear to us. Second, I would like to explain the positive purposes we were trying to achieve in this case. Third, I would like to pose several questions that we have asked ourselves about our management of the investment, and then I will provide answers to those questions.

Finally, although I will not speak to it, in the notes I am using for this presentation, which will be circulated afterwards, there is a short, technical appendix on the management of venture capital investments. I had suggested to the clerk of the committee at one point that the committee would

find it useful to hear from a prominent, full-time venture capitalist about some of the conditions that normally surround the management of investments of this nature. I understand such a person is not available, so we have prepared a very brief technical appendix which I hope committee members will find useful in dealing with what is really a rather technical subject.

As committee members will recall, the decision to invest in Graham Software Corp. was made by the IDEA Corp. IDEA was established in 1981 as a schedule 2 crown agency to promote the process of technological innovation in Ontario. As a schedule 2 agency and in conformity with Management Board of Cabinet directives and guidelines, the individual transactions coming before the agency are not reviewed by a minister or the government in any way. They are made entirely by the agency's board of directors. At the time of the first investment in Graham, the IDEA board was made up of individuals who had been appointed before the summer of 1985. The board had strong representation from the private sector and from academic circles.

Early on, IDEA determined that a focus for its investment would be industries where Ontario was seen to have strong competitive advantages and where opportunities existed to create commercial products. The Ontario computer software industry was identified as one such industry because of Ontario's world-class research facilities, its proximity to the US market and a diversified range of sophisticated computer users in the province. It was that strategic background that underlay the first investment in Graham Software.

Graham Software Corp. had been established to develop a world-class marketing and distribution system for Ontario software products. In August 1985, Graham Software sought an investment by the IDEA Corp. to market two major software products that were to serve as a springboard for that distribution system. Graham Software planned at that time to market two particular products, one an applications generator developed by a Hamilton-based author and the second an application software product developed by a Toronto company.

The business plan presented to IDEA in August 1985 by Graham Software Corp. indicates that its main strength was the management team composed of Terry Graham, Ken Wawrew and Robin Wigdor, who had experience in the computer software industry. The financial projections made at that time showed that the IDEA investment of \$3 million, coupled with an investment of \$2 million by the management team, would enable Graham Software to carry on successfully for some time as a private company without recourse to public capital markets.

These figures are quite relevant in relation to what actually happened. At that time, the cash position of the company was projected not to drop below \$1.1 million during 1986 and it was anticipated that in July of that year the company would have \$1.5 million in cash resources available to it. I will describe shortly the condition of the company in July when we assumed responsibility for the investment, but perhaps members of the committee might find it useful to note that projection in the business plan.

Mr. Philip: Give us that first figure again, please.

Mr. MacKinnon: The cash position prior to September 1986 was projected not to drop below \$1.1 million and it was anticipated that in July 1986 the company would have \$1.5 million in cash resources available to it.

On September 18, the IDEA board accepted the recommendation of its staff

that IDEA invest \$3 million for a minority shareholder interest in Graham Software Corp. The phrase "a minority shareholder" is important in terms of the subsequent development of this matter because, as those members of the committee who are lawyers would know, the rights available to minority shareholders, which IDEA was, are generally very limited under the Business Corporations Act. IDEA's status as a minority shareholder is quite a critical point in terms of subsequent developments.

Anyway, at the time the investment decision was made, the shareholders' agreement authorized IDEA to nominate a director to the board of directors, and Bill Douglas became that representative on the Graham board.

1140

In March 1986, the IDEA board accepted a recommendation of its staff that IDEA invest a further \$2 million in Graham Software Corp. The purpose of this investment was to pay for the cash portion of the purchase of the mainframe software product known as Mazdamon, which had been developed by an Ontario author.

At the time of the second investment, the following information was put forward to the IDEA board by its staff: first, that the three products in its microcomputer portfolio had attracted industry acknowledgements in North America as being leaders in their markets; second, that all three microcomputer products were currently in their product launch stage and had accomplished important milestones ahead of schedule; third, that the initial start-up financing arranged in September 1985 had not been expended and that Graham Software was reported at that time to be running slightly ahead of budget; fourth, that the early successes of its product introductions and the increased growth rates had led Graham Software to contemplate a US\$5 million financing in the summer of 1986; and finally, that it would be inappropriate to use existing funds from within Graham Software to complete the acquisition of the Mazdamon product because that would interfere with the marketing plans for other microcomputer products.

It does not appear that financial statements were reviewed by IDEA board members in support of the recommendation for the second investment. However, the business plan presented to IDEA by the company in August 1985 projected a cash position of approximately \$2.8 million in March 1986.

The second investment transaction closed in escrow on March 10, 1986. The agreement covering the marketing rights to the Mazdamon program was concluded and the funds were released to the company in mid-May 1986.

The ODC came into the picture on July 1, 1986. The IDEA investment of \$5.1 million was transferred to us on that date. From the time the investment became our responsibility, the ODC has made a vigorous effort to ascertain the reasons for the failure of the company and has pursued every possible alternative for recovery.

At the time the IDEA investment in Graham came to the Ontario Development Corp., circumstances can only be described as desperate. The company appeared to be virtually insolvent. Its records were apparently in disarray. Staff were about to be laid off. Software authors were becoming increasingly disenchanted and were expressing that view. Finally--and from our point of view, most worrisome--the creditors of Graham soon began calling the ODC. looking for payment of normal trade arrears.

I would refer you to a comment I made earlier, noting the projections in the business plan indicated that at that time the company should have \$1.5 million in cash resources available to it, but we found quite that irreconcilable with the fact the trade creditors were calling us demanding payment.

I would like now to describe for committee members the events that have taken place between July 1, 1986, and the present day. First, although William Douglas had resigned as an employee of IDEA on April 4, 1986, to become the treasurer of Graham Software Corp., he was still the IDEA representative on the board of Graham Software in June 1986. Upon assuming responsibility for the IDEA investment in Graham Software, ODC immediately replaced him with my colleague Mr. Winter, who is on my right.

Despite the apparent insolvency of Graham Software, the layoff of employees and unpaid creditors, Mr. Graham insisted that the company was viable and requested ODC to make either investments or loans in the company. In August 1986, ODC indicated that it would review any application for funding by Graham Software in the same manner as it would deal with a regular ODC client. It was clear that the company was in a very bad financial position, that it would be very difficult to make a detailed assessment of its condition and--again perhaps I can ask committee members to note--that the corporate structure was very intricate. We did not have full access to all related companies. Finally, the result was that Mr. Graham did not submit an application to ODC for a loan.

It should be noted that despite vigorous efforts at that time and subsequently it has proved impossible to obtain fully adequate information about the financial position of the company, and in particular to ascertain why its fortunes deteriorated so abruptly between March, when the IDEA board properly could be assumed to be relying on the previous business plan and would have expected it to have \$1.5 million in cash, and July or August when the company was clearly insolvent and in desperate straits.

At that time, although ODC was not prepared to make an investment in Graham Software, we did undertake to see whether private sector financing could be arranged for the corporation. ODC engaged a well-known merchant banker to report on the prospects of the company obtaining private sector funding. The merchant banker's report in some ways was favourable. It indicated that the Ontario software products were of high quality and had significant potential, but the report was very critical of management. The report went on to detail the complete failure of Graham Software to perform properly. The report stated that "results to date emphasize that the company has lacked strategic planning and smart application of resources and money." Perhaps I can just repeat that. The formal report of the merchant banker that we hired to review it at this time indicated that "results to date emphasize that the company has lacked strategic planning and smart application of resources and money."

It was then recommended by him that ODC's efforts be directed to assisting the company to conduct an orderly winding up. The report recommended that an effort should be made to enlist the assistance of a "soft receiver" who would have the ability to negotiate the most profitable disposition of assets.

What followed was a most difficult struggle by ODC, and in my view we were resisted at every stage by Graham Software, its principals and its outside lawyers, to wind up the affairs of Graham Software Corp. so that

creditors could be paid and ODC could salvage what remained of the original IDEA investment."

Although it was clear that Graham Software was insolvent, the exact extent of its debts and values of its assets were unknown. Since Graham Software did not provide sufficient information concerning the business affairs of the company and all related companies, ODC was forced, in October 1986, to prepare the legal documents to bring an application to court to wind up Graham Software Corp. It was only when the legal action was about to be commenced that Mr. Graham agreed to permit Laventhol and Horwath to review the business affairs of the company and its subsidiaries. Laventhol, in its first report in early November, indicated that as of October 27, 1986, the Graham group of companies had a substantial net deficit and cash of \$81,000. However, I will remind members the 1985 business plan projected a cash position far in excess of that in September 1986.

The report confirmed a theme that we think is a recurring theme throughout this whole piece of repeated failure by the company to come close to reaching the targets of its business plan and for showing the kind of strategy that would indicate that it had solid prospects for success.

At the time the Ontario Development Corp. was taking steps to determine the financial state of the company, the agreement relating to the Mazdamon program, the company's only major asset, had gone into serious default. Because of the default, the Mazdamon program would have reverted to the original owner for \$500,000 on October 18, 1986, under the terms of the agreement.

Mr. Chairman, I would like to perhaps ad lib for a moment or two on that. The letter from the Datamatrix people, the owners of the Mazdamon software, is I believe included in the materials that are available to the committee and it indicates that it was not just the Ontario Development Corp. that was having difficulty getting information from the company. Under the terms of its agreement with Datamatrix, the company was required to provide routine financial information to Datamatrix, the owners of Mazdamon, and it failed to do so.

1150

It was our view at the time that failure to provide basic financial information to a third party to whom one was contractually bound to provide it was a serious matter and confirmed the misgivings we had arising from our own difficulties in getting proper information. I refer you to clause 1 of that Datamatrix letter to indicate that it is not just the ODC that had difficulty in finding out what the facts were.

In any event, the company did not cure the default by making the payment of approximately \$41,000 which was due to Datamatrix. Rather than allow the Mazdamon program to revert to Datamatrix, ODC loaned the funds to Graham to cure the default and permit this asset to be subsequently sold at its market value. The loan was repaid when the program was sold.

In early November, Graham Software Corp. agreed to ODC's request to engage Laventhol and Horwath to solicit offers to acquire the rights in the computer software products held by the company. At that time, we were very concerned that the Mazdamon software, which was developed in Ontario, might be sold elsewhere. We looked for Canadian companies that would be interested in it. Only one expressed serious interest. Regretfully, terms of sale could not be agreed upon with that company.

Ultimately, on January 15, 1987, the Mazdamon software was sold to UCCEL, a major US computer software company. ODC required at that time that the assets of Graham Software be frozen during the 10-day period following the Mazdamon sale, after payment of arm's-length creditors. Messrs. Graham, Wawrew and Wigdor insisted that 50 per cent of the assets owed by Graham Software to non-arm's-length creditors, or approximately \$90,000, should be paid on closing. ODC reluctantly agreed to do that in order that the sale could proceed and it did proceed. However, there was one payment of \$55,000 made on closing to companies controlled by Mr. Wigdor that we did not have a satisfactory explanation for.

In any event, at that time ODC's position was that Graham Software should be wound up so that recoveries could be maximized. In our view, the IDEA Corp. had paid for the Mazdamon program by means of its \$2-million investment in Graham Software, and given the amount of public funds involved in the company in total, we felt the correct thing would be for the claims of IDEA to get priority over other shareholders for this asset that the public purse had enabled Graham to purchase. Messrs. Graham, Wawrew and Wigdor argued that the net proceeds should stay in the company to pay continuing operating expenses, salaries and other non-arm's-length expenses.

Since time was running out on the standstill agreement resulting from the UCCEL purchase, ODC then brought an application in the Supreme Court of Ontario for an order winding up Graham Software Corp., appointing an interim receiver and giving ODC the opportunity to challenge non-arm's-length payments. Graham Software Corp. and its principals all appeared with counsel and opposed ODC's application. The hearing of this application was adjourned on January 22, 1987.

ODC then brought a new and separate application to restrain Graham Software Corp. from incurring unauthorized liabilities or making unauthorized payments and prohibiting the Toronto Dominion Bank from operating the bank accounts of the company. Before this application could be heard, Graham Software and its principals brought a motion to dismiss ODC's application. However, after hearing counsel, the court once again adjourned the application. As a result, the Toronto Dominion Bank took the position that it was not yet prohibited from operating the bank accounts of the company, notwithstanding ODC's concern that payments may not have been properly authorized.

At this juncture, we were faced with a very difficult choice. ODC could continue what would have been a time-consuming and costly litigation to put an end to the self-dealing and extravagant spending at Graham Software, or it could settle out of court. We believed that little could have been achieved by pursuing litigation because in all likelihood all the money would be gone by the time a judgement could have been obtained.

In addition, ODC did not want Graham Software to continue to represent to Ontario software authors and others that the Ontario Development Corp. was a shareholder and supporter of the company. Accordingly, when ODC was satisfied that legitimate creditors of the company would be paid from the proceeds of the UCCEL purchase, we agreed to settle the outstanding court applications.

The amount of the settlement was largely determined by corporate law. The settlement resulted in cash and assets totalling \$300,000 being repaid to IDEA. IDEA is a technical subsidiary owned by us; so it was really paid to ODC. While that was a small part of IDEA's initial investment, it represented

some 60 per cent of what remained in the company and was eligible for distribution to shareholders.

Perhaps I could move on and talk generally about what this case illustrated. First of all, I wish to state unequivocally in terms of basic principle that ODC did nothing to impede the development of Graham Software at any time when there was a reasonable prospect that such development would occur in accordance with normal business principles. ODC did not impede the search for equity capital--a suggestion that has been made--but we assisted it by retaining a merchant banker to provide advice and insisting that he be given full access to the affairs of the company.

However, the fundamental issue remains that less than a year after IDEA made its first investment in Graham Software, the company was insolvent. The company went through \$5.1 million of IDEA money and \$2 million of other funds in approximately a year. By any standard, that is a remarkable amount of money to spend in a small or middle-sized company in such a short period of time. In our opinion, it is fair to say that there was serious mismanagement on the part of the company. A partial list would include:

1. Excess salaries. At approximately \$160,000 a year plus car allowance and other benefits, Mr. Graham's total package was roughly double what we and our compensation advisers consider to be appropriate.
2. Extreme costs. A clear example, in our view, is the retainer paid to Robin Wigdor together with actual fees for service. We estimate that these must now approach nearly \$250,000 for a period of approximately a year.
3. Even more seriously, failure to maintain good relationships with the software authors. One of them, in correspondence that I believe members of the committee are familiar with, accused Graham Software of serious wrongdoing, and there were problems with some others.
4. Failure to develop a new business plan when it was clear that the underpinnings of the old one were gone.

That is a partial list only.

I indicated earlier that I would explain the positive purposes which lie behind the events I have described. Let me say that the events I have described, and which Mr. Graham and his colleagues will doubtless describe from their perspective, were very combative. For all concerned, they were not profitable in any immediate sense.

Our purposes are both honourable and necessary, very honourable and very necessary. In this case and in the other serious problems we inherited from IDEA, we are acting under direct instructions to manage the investments fairly, cleanly and efficiently. In doing so, we are pursuing six basic principles:

1. We are to preserve and enhance the value of the investments.
2. People with ideas are to be supported. Influence counts for nothing.
3. Those IDEA companies with commercial merit are to be assisted over those that cannot demonstrate it.
4. Every dollar of public funding is to be treated with respect, in recognition of the effort made by taxpayers to generate it in the first place.

5. Public agencies are not to be easy marks or to let themselves be seen as such.

6. Extravagant use of public funding will occasion full and vigorous use of all legal means of recovery. If anything more than extravagance is involved, then all measures available to us by law will be used.

1200

The real results of our efforts in the cases we are dealing with, particularly this one, cannot fairly be measured in dollar terms alone, although I hasten to add that we are happy to defend ourselves based on the financial results.

The real results of the philosophy we are bringing to the management of this portfolio will be more effective, more efficient and certainly less costly conduct of the commercial programs of the government of Ontario in future years. Those who seek explanations for the philosophy we have brought to this case and to others will find it in this larger purpose, and no one should underestimate our commitment to it.

We will do whatever we can to pursue this goal through every responsible legal means at our disposal. We will recover funds as vigorously as we can, even if the short-term costs exceed our gains, because we know well the real gain will be better achievement of public purposes in the future. That and fairness are the only things which have motivated us in the case of Graham Software.

I would now like to turn this discussion in other directions. I am going to list several possible questions and provide our answers to them. The first possible question is one that Mr. Gillies has raised in the Legislature: When ODC knew that Graham Software was insolvent as early as August 1986, why did it wait until January 1987 to make efforts to recover its investment?

I will not repeat the sequence of events I have just described, but a partial list only of the activities that have taken place since July 1986 includes Mr. Winter's appointment to the board, the rejection of further funding to Graham Software, the review by Sharwood and Co., the negotiations with respect to the Mazdamon program, the discussions about the involvement of a receiver or auditor, various court cases, and most important, the curing of the default in the Mazdamon program, because it is that essential action that permitted the sale of the program at a value that was sufficient to pay off the creditors and to return limited amounts of funding to the public purse.

That is only a partial list. My point is that we have been active and vigorous in the management of this investment since the day we assumed it, and our first major initiative was taken within 72 hours of assuming control of the IDEA portfolio.

A second major question might be why it is, in the light of the report to the IDEA board in 1986 that the operations of Graham Software were proceeding satisfactorily, the company became insolvent as early as July or August of 1986.

The answer is that we, our advisers and, we understand, the Provincial Auditor have reviewed the financial affairs of the corporation. We have not seen the Provincial Auditor's report, but we hope to see it soon. Despite all these efforts, we have not been able to obtain an adequate explanation for the

sudden, apparent deterioration in the affairs of the company. When we do receive the Provincial Auditor's report, we shall at once review all the information in our possession to determine what further action we can now take.

I should note in this respect that the settlements reached in the court applications earlier this year in no way preclude us from pursuing remedies against anyone who may have abused his position as an officer and employee of the company.

Another question involves the possibility of political influence. As we know, the bulk of the funds from the IDEA Corp. were expended in the final year of its life. In the light of that, especially given a company as young as Graham, is it not possible the investment was made because of political influence?

The answer from our point of view is that we have seen no evidence whatsoever that the investment in Graham Software was politically motivated. However, as I have said, ODC did not make the decision to invest in Graham Software and I think it might be wise to ask for further details on that aspect of the problem from the representatives of the IDEA Corp., who will be appearing shortly.

I should say, however, that this case and some others illustrate the serious deficiencies in the IDEA operation which were a major part of the government's decision to close down the IDEA Corp. They also illustrate problems which have faced governments in all parts of Canada of all persuasions over the last 20 years. I would like to return to this theme at some point in the future because I think much can be learned in this area to help us in the future.

Finally, as we examined the papers in our possession, it is clear to us that for several years there had been concern by successive Ministers of Industry, Trade and Technology about the accountability and decision-making processes of the IDEA Corp. Two of them at least, the present minister and a minister in the preceding government, had taken strong actions with respect to the agency as a result of those concerns. It is clear to us that the problems we are dealing with in this case, particularly the portion of them that stems from IDEA Corp. supervision, had caused successive ministers of the crown concern. That is an area where more discussion might be useful at some point.

Another question might be, did ODC renege on a commitment to invest further moneys in Graham Software, thereby jeopardizing the viability of the company?

The answer is that there was no commitment, contractual or moral, in any document we have in our possession, to provide additional funding. Second, while it is true that venture capitalists frequently participate in repeated rounds of financing, they only do so if they continue to be satisfied with the progress of a company in relation to its business plan or other prearranged milestones. Given that Graham Software was faltering on the brink of insolvency less than four months after receiving a major investment from IDEA and that it had not come close to achieving the more important targets in its 1985 business plan, there could be no question of satisfaction.

Another question could be, did ODC or the government in any way impede the search for equity capital by Graham Software?

The answer is no. When Mr. Graham met with me in August 1986, he blamed publicity surrounding the IDEA Corp. for his failure to find new partners. I

did not agree with that view, because the publicity at that time really involved only IDEA and there was very little negative publicity, if any, surrounding Graham Software at that time. I can only observe that a company in arrears to its landlords and other creditors can expect its attractiveness to investors to be somewhat diminished.

In point of fact, as I have noted, we did hire a firm of merchant bankers to help advise Graham Software in its search for equity financing, among other things. Mr. Sharwood, the president of that company, and Mr. Cutts, the principal involved in this assignment, complained to me that they were not provided with ready access to the company, and I had to complain personally on their behalf at that time.

Another possible question would be: Despite the performance problems, the fact remains that the products purchased by Graham Software were good, and the sale of the Mazdamon program at a price much higher than the purchase price is evidence of that. Is it not possible that this demonstrates the skills of the management of the company and that we destroyed a company with good prospects?

The answer is that it takes much more than a good product to make a good company. Good financing, good marketing, good supplier relations, good production techniques, good relations with investors and so on--all are essential. Graham Software had few of these other strengths. I will just repeat again the final conclusion of the Sharwood report: "Results to date emphasize that the company has lacked strategic planning and smart application of resources and money." And, of course, the extent of mismanagement and, in our view, excess spending in the company clearly demonstrated to us that it had few prospects for marketing its products.

Another question might be, what is the extent of mismanagement? As I have already indicated, we still do not have a satisfactory explanation for the apparent, sudden deterioration in the affairs of this corporation. However, it appears to us that there was a great deal of mismanagement. Earlier I gave three or four examples, and I will not repeat them now.

Another question would surround the IDEA Corp.: What responsibility did the IDEA Corp. management have for this situation? As I have already explained, there may be some evidence that the IDEA board did not have fully accurate information about the company and its prospects when it made its investment decisions. In addition, the IDEA Corp. continued to use Bill Douglas, who left IDEA to join Graham, as IDEA's representative on the board for months after he joined Graham Software. We consider this behaviour to be wrong and to constitute grossly deficient supervision of the investment by IDEA. We therefore believe that we did not have reliable information about Graham Software from the IDEA board member when we assumed responsibility for the IDEA portfolio.

Another question would surround the size of the settlement. How, for example, could we justify ODC reaching a settlement with Graham Software for \$300,000 when the original investment was \$5.1 million? Is this a scandalous waste of the taxpayers' money?

I can repeat the answer I have already given to that question, which is that we had a simple choice: We could continue the litigation or settle out of court. To pursue the litigation would have had little beneficial results because all the money would have gone by the time the case would be heard.

As well, the distribution of the settlement was governed by principles of corporate law. I should note, however, that without the initial loan of \$40,000 we made to cure the deficit on the Mazdamon program, the later sale of that program for \$2.4 million would not have been possible. In our view, our efforts to make that loan, and Mr. Graham's laudable efforts with the receiver to sell the asset, generated a settlement of approximately \$2.4 million, and we think that one of our most important objectives, which was the welfare of the trade creditors and others associated with this company, was achieved. Therefore, we really look upon it as \$2.4-million settlement, to which our \$40,000 loan was instrumental to its achievement.

1210

A final question--perhaps not a final question; if I can go on, there are a number of other questions. One question that might come to everybody's mind is, given the nature of the observations I have made, why has ODC not sued Graham Software Corp., its associated business entities and its principals? The answer is that we have undertaken a flurry of activity with respect to Graham Software, and I can assure members, as I did in other cases about which we have appeared before the committee, that all avenues of redress will be considered and that every legal remedy open to us will be pursued.

A number of other questions could arise in relation to this investment. One question that frequently comes up in the case of high-tech companies is whether massive spending is necessary at the very early stages in the development of the company. Some claim it is; some claim it is not. It is our view that it is impossible to generalize but that there is no basis in most companies for making very massive expenditures that are all out of scale in relation to the revenues they generate even at the very early stages in the development of the business. There are some people who have generated remarkable commercial successes in areas where economies of scale loom very large without in any respect incurring significant overspending.

In that sense, I would like to read one paragraph from a book written recently, which describes, among other things, the start of the Japanese car offensive into North America. I would like you to contrast the patterns of spending that will later be exhibited in relation to Graham Software with the initial sales effort by Nissan in North America:

"The first engineers who came from Japan soon realized how poor they and their country were and, by contrast, how rich America was. Each man had \$15 a day for expenses. Even in the pre-inflation days of 1958, \$15 was very little money, and each of them kept a chart showing how much money he had spent and how much he had left. For the first few nights, they stayed at what seemed to them to be a good hotel in downtown Los Angeles, but then, to their dismay, they found it cost a great deal of money, so they had to move to a hotel that cost only \$6."

Another quotation along the same lines:

"It was the first time that any of the four engineers had felt poor. That was the oddest sensation of all. They lived in what was a poor country, but in America, how little they actually owned and possessed came home to them in endless ways, whether it was the daily rationing of their allowance or professionally, in the constant sense of America's industrial affluence and their own accomplishments."

My point is that you can sell things without expending great resources of money, and the results of the \$15-a-day expense allowances from Nissan can

be seen on any street corner in North America if you stand there for 30 seconds.

Another observation or criticism that potentially could be made of us is that perhaps this case is a result of a group of civil servants far removed from commercial reality not understanding how things are done. The answer to that, of course, is that in this case we have sought outside advice from major decision-making points at every stage. One of the persons assigned to the case most intimately, Mr. Budge, was himself a company president over some period of time. We believe that the actual decision-making here is a unique combination of public and private sector efforts and that our decision-making at every step has fully reflected commercial considerations and a solid business perspective.

In conclusion, this is fundamentally a failure of management, and second, a failure of supervision by the original investing agency. I can only say that we have done everything possible to minimize the results and we will continue to do so as vigorously as we can.

Mr. Chairman: Thank you, Mr. MacKinnon. We are going to break for lunch right now and the clerk is going to circulate copies of the auditor's report. We will resume our deliberations at two o'clock.

The committee recessed at 12:15 p.m.

CA 20W
XC 21
-P73

initiation

P-61

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

MONDAY, MARCH 23, 1987

Afternoon Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Barlow, W. W. (Cambridge PC)
Davis, W. C. (Scarborough Centre PC)
Epp, H. A. (Waterloo North L)
Philip, E. T. (Etobicoke NDP)
Pope, A. W. (Cochrane South PC)
Sargent, E. C. (Grey-Bruce L)
Smith, D. W. (Lambton L)
South, L. (Frontenac-Addington L)
Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South
Gregory, M. E. C. (Mississauga East PC) for Mr. Davis
Hennessy, M. (Fort William PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor
Sciarra, J., Administrative Assistant
Mishchenko, N. J., Director, Special Assignments Branch

From Graham Software Corp.:

Graham, T. D., President
Wawrew, K., Executive Vice-President
Wigdor, R. J., Legal Counsel and Secretary

Blakley, H., Former President, IDEA Corp.

Douglas, W., Former Senior Manager of Investments, IDEA Corp.

Maruzzo, B., Former Senior Manager, IDEA Corp.

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Monday, March 23, 1987

The committee resumed at 2:05 p.m. in room 151.

GRAHAM SOFTWARE CORP.
(continued)

Mr. Chairman: I am going to see a quorum. I will ask Mr. Graham and Mr. Wigdor to come forward at this point. Mr. Graham, for the purpose of the record, would you identify yourself, your colleagues and your roles in the company.

Mr. Graham: My name is Terry Graham, president and chairman of Graham Software Corp. To my immediate right is the corporation's counsel, Robin Wigdor; to my immediate left, the executive vice-president of Graham Software, Ken Wawrew

Mr. Chairman: Do you have a statement?

Mr. Graham: Yes, I do.

Mr. Chairman: Please proceed.

Mr. Epp: Do we have copies of it, Mr. Chairman?

Mr. Graham: Unfortunately, I did not bring copies, but I can certainly provide them.

Mr. Chairman: Perhaps we can get a copy of your statement after you have delivered it. The clerk can copy it.

Mr. Graham: If there is a facility anywhere here, I can certainly make a copy of it.

In just over a year, Graham Software Corp. exhausted its \$7.1 million working capital. Staff grew from zero to over 50 and dropped back to zero. International offices were established across the United States and Europe and then closed. Corporate headquarters were created in Toronto and then abandoned. Millions were spent on software product market launches, followed closely by fire sales of the same products.

Mr. Epp: Did you say market launches or market lunches?

Mr. Graham: Launches.

By no standard of measure can a GSC project be evaluated as anything but a colossal loss of opportunity and under no circumstances can the abandonment by the Ontario government of its legal and moral obligations to this project be ignored.

Why? Any analysis of a failed project and anyone who seeks to learn from the mistakes must first consider the nature and extent of the project undertaken. GSC was formed to publish and integrate commercial computer

software from three principal market arenas. Targeted were IBM mainframe users, IBM PC and equivalents, and business minicomputers, principally those of Digital Equipment Corp.

The principals, myself, Tom Herring and Ken Wawrew, had well-established track records and had each independently earned an enviable degree of success in marketing and selling computer software. We recognized that the software publishing business had certain not atypical attributes: very high leverage and margins but only after a capital-intensive launch period. Our objective was to establish an international distribution and marketing organization which a multitude of software authors could take advantage of.

In the summer of 1985, while Graham Software Corp. was still in its formative planning period, it was approached by IDEA Corp. to consider an investment by IDEA. The initial overture was rejected because it was felt that the financial partner that GSC would require should be free from political interference and be in a position to invest or package the investment with the capital required to launch a growing stream of software products.

Although IDEA as a provincial crown corporation seemed to fail on both counts, its representatives hastened to point out that a new team of professional venture capitalists was in place, Harold Blakley, Geoff Cannon, Daryl Logan and Bill Douglas, supervised by an independent board of directors chaired by Professor Ian Macdonald, with a mandate that precluded political interference and otherwise was a good fit for GSC's requirements.

1410

GSC's initial capitalization was completed in mid-September with IDEA investing \$3 million and the principals and one passive investor \$2 million. With the initial funding secured, GSC moved quickly to implement the opening moves of its game plan. Within four months of intensive activity, the publishing rights to a DEC market 4GL product, known as Intellisys, and a number of microcomputer products, principally, Alice, scLaserplus and scWriterplus, had been secured and market launches were in progress.

Negotiations to acquire rights in Mazdamon and establish a mainframe telecommunications monitoring control package were in an advanced state. Working relations with IDEA management were good. Although GSC had received the disquieting news of political reconsideration of IDEA's future, IDEA was none the less leading the drive to raise the \$7-million capital required to purchase Mazdamon publishing rights and effectively launch the product.

IDEA was sufficiently confident its efforts would ultimately succeed that it purchased \$2 million of GSC preference shares even though the remaining \$5 million had not yet been found. While gratified by this demonstration of confidence, GSC became increasingly concerned, over the second quarter of 1986, that its financial partner would be unable to honour its commitments.

Staff from the Ministry of Industry, Trade and Technology appeared to play an increasingly active role in the affairs of IDEA. The IDEA organization began to disband and the critical IDEA players, at least from GSC's perspective, were forced to redirect their attention elsewhere. Geoff Cannon, in particular, was forced to abandon his fund-raising commitments on GSC's behalf to deal with MITT staff.

In retrospect, one can point to two events in this period that were critical to the future success or failure of GSC. First, GSC decided to proceed with Mazdamon even though provision for the remaining \$5-million requirement had not been finalized. A substantial investment of corporate contingency funds was made in tooling up for the Mazdamon launch. The \$2 million provided by IDEA barely covered the initial outlay of \$1.7 million to acquire rights to the product and related closing costs. While microcomputer revenues were running ahead of forecast in this period, the Intellisys author group was still struggling to overcome various technical product problems and the product made no cash contribution to operations. As a result, GSC was experiencing negative cash flow slightly in excess of budget while depleting its contingency reserve to fund the Mazdamon market launch.

For this strategy to succeed, the missing capital would have to be put in place by early summer. Even a fraction would suffice as Mazdamon was greeted with explosive success in the market. In the same period, sCLaserplus was coming to dominate the desktop publishing market and was poised to become the standard for Hewlett-Packard's market-leading laser printer.

If funds could be found to bridge the gap to the start of Mazdamon revenue being earned from trials converting to firm sales, conventional accounts receivable financing would meet the remaining cash flow shortfall, while profits would start to build a base of retained earnings. The management focus narrowed to bridging that gap. Even \$1 million would carry the day.

The second event that in retrospect was critical was the failure of a proposal by IDEA's professional managers to oversee its investment portfolio. Informed sources have since advised that the proposal was before the Management Board of Cabinet when the Elinor Caplan/Wyda Systems affair broke in the press. Ill-informed political caution won out and the IDEA portfolio was instead transferred to the Ontario Development Corp.

From the perspective of 1987, it is obvious this is one of the most regrettable decisions in the history of the Ontario government. The carnage that has been wrought by the untutored fumbblings of ODC staff and their political masters is only now coming under public scrutiny. The tyrannical tactics employed by them has strained the credulity of those who observed them directly. The conduct of ODC towards GSC in particular has been so immoral, so outrageous, that stories about it seem like fantasies.

Initially, though, in June 1986, the transfer of management responsibilities could not come soon enough for GSC. Unfortunately, uncertainty breeds paralysis, particularly in government, and for many weeks in the most critical period of GSC's short history, no one had an interest, let alone authority, to come to grips with the funding shortfall. Lamentably, the ODC official charged with responsibility for IDEA's investment in GSC was apparently not in a position to change his plans for an extended vacation. It was the end of July before he was finally available for a board of directors meeting. That critical meeting marked the end of GSC's advance and the beginning of its long retreat.

Robert Winter, ODC's new nominee to GSC's board, may have been well rested from his holiday but was totally unprepared to deal with what by then had built into a full-blown financial crisis. The only action taken by Mr. Winter was to effectively veto an employee share purchase program approved by IDEA prior to the change in its management.

The only assistance provided was the announcement of the recently

formulated position of the ODC: no funds had been available to ensure that IDEA investees would receive further financial support. Two of GSC's five directors promptly resigned. GSC implemented its worst-case contingency plan, laying off more than half its staff and abandoning all activities not in the direct furtherance of: (1) generating short-term cash flow; (2) attracting significant capital to bridge the shortening gap to Mazdamon receipts.

August and September were comprised of day after day of intense frustration. Staff morale was low. Support staff had virtually disappeared in the layoffs and sales staff were under intense pressure to generate cash in the short term, often at the cost of the loss of larger but longer-term sales. Senior managers split their time between supporting sales activities and attempting a series of increasingly desperate measures to raise capital. Not surprisingly, in this climate we failed.

The position of ODC in this period can perhaps best be exemplified by a comment made by Mr. Winter to myself and Mr. Wigdor, "It would be best, from the provincial government's point of view, if GSC went quietly bankrupt."

It seems that ODC was working towards that end in an insidious way by its interference with GSC's fund-raising efforts. ODC staff variously would not accept or return calls, would agree to attend meetings with prospective investors and then not attend, without apology or excuse, and even went so far as to attempt to persuade GSC's auditors to terminate service to the company so that independently prepared financial position statements would be unavailable.

On one remarkable occasion, a GSC executive was given the commitment of the minister that ODC would participate in a discussion with a prospective investor group. No one showed up. A call to the minister's office resulted in the report that no one was at ODC. This was at 10:30 a.m. on a normal business day. The incredulous investors abandoned the meeting.

By October 1986, cash flow breakeven had been achieved and GSC was operating profitably. The enormous debt burden constrained operations, though, and pressure from trade creditors was intense. None the less, a solution had been identified to relieve the working capital shortfall, involving what was by then a highly speculative public offering of GSC securities in conjunction with a reverse takeover of a publicly traded COATS company.

Then Minister O'Neil announced that the government of Ontario was writing off its investment in Graham Software and he expected the company would be in receivership in the next few days. That was the nail in the coffin that could not be pried loose. All further recapitalization prospects was destroyed.

Despite intense pressure from ODC to make an assignment in bankruptcy, Graham Software held to the view that a higher value for its assets could be realized if the company continued operating as a going concern. In a compromise that led to the establishment of the Laventhol and Horwath inquiry, which is still under way, ODC refrained for the moment from commencing threatened litigation and GSC put Mazdamon up for sale through a US merchant bank specializing in the high-technology industry. A sale was ultimately completed in January for about a \$1-million profit. All creditors were paid and ODC's actions to seize GSC's remaining assets were defeated.

Ultimately, the IDEA shareholdings in Graham Software were repurchased at a very substantial loss to the public purse. GSC's microcomputer software

publishing operations continue, on a much reduced scale, through new owners. More than 50 high-technology jobs were created and then lost. The biggest loss, though, was the loss of the opportunity to build a world-class software publishing enterprise--an enterprise, moreover, that would provide a much-needed window of opportunity to Canadian software developers.

GSC, its employees, shareholders and suppliers were all victimized by Mr. O'Neil and the civil servants accountable to him. In May 1986, GSC was valued by the government of Ontario at almost \$20 million. Five months later, the same government wrote off its investment. It got what it deserved. The people of this province and the shareholders of Graham Software certainly did not.

1420

Mr. Chairman: Does that conclude your remarks?

Mr. Wawrew: I would like to make a statement as well.

Mr. Chairman: All right. Go ahead.

Mr. Wawrew: My statement is focused on the achievements of Graham Software since its inception in 1985. It falls under the category of a software publisher in the areas of product selection, marketing, distribution and sales and manufacturing. I think it is important to reflect on how long a company has been in business when I cite some of the achievements that fall under that area.

First of all, let us talk about product selection. In 1986, Graham Software launched four software products. Three of these software products proved to be successful. One proved not to be successful. That was the Intellisys product, which was the first product launched. By coincidence, we did not continue to distribute this product, because the developer failed to deliver it, yet ODC has continued to invest in this product.

If you look at the other products we selected, the Mazdamon product, which we sold to the UCCEL group in the United States, was a major software product developed in Canada that had no competition in the world when it was sold. It was a product without competition.

Distribution and sales of software. I would like to point out a few achievements in distribution and sales of software. Graham was able to attract the top distributors worldwide. A typical major distributor in the United States would evaluate over 5,000 software products in one year. Out of that, it would select perhaps six per cent to add to its distribution network. Usually that six per cent was selected from its existing suppliers, the major United States software publishing firms. Graham was able to penetrate all the major software distributors in 1986. Those people who are in the business will know the names of Softsel, Ingram Software Distribution, Micro-D, Software Resources, Tandy Corp., Quadram, Micro America.

In Europe, Bertlesmen, Europe's largest distributor, was distributing our products. In Great Britain, Software Ltd. was distributing our products. In Australia and the Pacific Rim, ACA Pacific was distributing Graham Software products. In fact, we had more than 300 dealers in North America carrying Graham Software products in 1986.

Let us look at the direct sales of the Mazdamon product and the success

we achieved in 1986. There was a list provided to you of all the sales of Mazdamon. Those sales were growing. They were direct sales to the Fortune 1,000 companies such as McDonnell Douglas, Boeing Computer Services, GTE, Firestone Tire, BASF in Europe, Bank of California and a growing list. The product is also used by the Ontario government.

The total revenues generated in 1986 by Graham Software were approximately \$1.4 million. Not very many new software companies can generate those kinds of revenues in their first year. I think that is significant to know. The revenues were peaking in 1986 at \$300,000 per month. If you do a projection of \$300,000 per month, you see where the revenues will take you.

There are a few achievements under the category of marketing that Graham Software achieved. I think it is important to note that we created a Canadian marketing department that marketed these products worldwide. All the work done to market Graham products was done in Canada and it promoted Graham Software products worldwide. We launched four products worldwide. Press relations were included in the marketing program. We were on the front page of PC Week. How many first-year Canadian software companies are on the front page of PC Week. ScLaserplus, our desktop publishing product, was rated number one by Software Digest, a very influential publication as far as decision-makers in North America are concerned. It was also favourably rated by PC-Publishing, Computer Consultant and Computing Canada. A lot of effort was spent on marketing these products worldwide. We established a joint marketing relationship with Hewlett-Packard, one of the top Fortune companies, which has a very successful laser printer. Hewlett-Packard arranged seminars where we spoke in their client base and we were able to joint market our product with Hewlett-Packard.

Manufacturing--a key element in distributing software. Graham Software was able to establish a very low cost manufacturing facility for Canadian software. In fact, in talking to comparable publishers in the United States, I found we were able to produce products approximately 25 per cent cheaper than comparable publishers in the United States.

Let us look for a moment at the Mazdamon sale, the sale of the product that was sold to pay off creditors and so on, and comment on that. It was sold for a little less than \$1 million profit from what Graham Software paid for it. The conditions that product was sold under were fire-sale conditions. We were under an awful lot of pressure. It was sold under fire-sale conditions for approximately \$1 million more than we paid for it. How much do you think that product was really worth?

There are a couple of achievements that I did not touch on that I would like to read from the Sharwood memo to David MacKinnon. It is from the first page of the memo and these are significant accomplishments cited by Sharwood.

First of all: "Offices established in Toronto, Houston, Boston, San Francisco, Chicago, New York and Wiesbaden, West Germany...." New York was incorrect; we did not establish an office there.

Mr. Philip: Can you give us the document number so we can follow it with you, please?

Mr. Wawrew: Document 14. I will give you a minute to turn to it.

Mr. Philip: We have it. Would you mind just starting that over again, now that we have it in front of us.

Mr. Wawrew: Document 14, the letter from Ken Cutts to David MacKinnon, lists significant accomplishments made by Graham Software Corp. since it began operations:

"Offices established in Toronto, Houston, Boston, San Francisco, Chicago, New York and Wiesbaden, West Germany; outstanding management team, particularly heavy in marketing experience, in the software industry; introduced Laserplus desktop software program for the IBM PC, Hewlett-Packard and Quadram laser printers; acquired a comprehensive network performance management software product, Mazdamon, currently installed in McDonnell Douglas Boeing Computer Services involved in Purina."

Those are just some of the major accomplishments that Graham Software was able to do in one year. I guess the point of reading out all these accomplishments is that because of the conduct of ODC over the past eight months, all of this has been lost to Ontario and to Canada. We do not have those distribution channels any more. We do not have that marketing department any more. If a software company in Canada is going to succeed, it has to re-establish all this. That is the end of my comments.

Mr. Wigdor: I would just like to conclude with some questions that we would like to put forward that we were unfortunately prohibited from (inaudible) to date.

Let us talk to the issue of the Sharwood review. My initial understanding of the Sharwood review when it was introduced to me was that Sharwood would be retained on behalf of Graham Software to do an evaluation of Graham Software and its current situation and to provide assistance in raising capital.

Until this meeting, the Sharwood memorandums and reports have been unavailable to us. They have also been unavailable to Laventhol and Horwath, which on several occasions requested those reports but has been denied access to them, which by the way is a breach of ODC's clear contractual obligation under the Laventhol report.

1430

When we concluded our initial meetings with the Sharwood group, it was explained to me by Mr. Cutts that he felt it was very important to provide cash-flow financing for Graham Software; 90 per cent of the work had been completed, the distribution was open and the products were accepted. You have to understand this is not a development corporation; it is a marketing corporation that selects viable commercial products and enters them into probably the most competitive market in the world. He explained to me that he was going to be recommending that the government continue funding for this project under the terms of the initial programs we had gone into with IDEA, that we were a pre-venture corporation and that they had an obligation for ongoing management and for continued funding.

I think Mr. Cutts was surprised--after all the experience I had, I certainly was not--when he received information from the government that no further funding allocation would be forthcoming. As you go through the chronology of the Sharwood issues, given that information and the time allotted, it surprises me not at all in the final conclusion, but I think it grotesquely ignores the obligation the government had at that point, which by the way was at the peak of not our potential but our current revenue-generating situation. I have a problem with that, and have up until today.

The other issue is, I would like to understand why the portfolio ended up in the Ontario Development Corp. and what preparation had been made to receive and deal with that portfolio. My understanding and what I had been informed--we had initiated our business arrangement with IDEA in September; by February, I was informed that IDEA was no longer going to be a corporation going forward under the government. We were informed after that there were various suitors for the portfolio and that an independent private sector group would be selected.

We went along on that basis and that belief, as we were informed. We also made contingency plans in the event that did not come to fruition, and no one was more surprised than ourselves when we found out that was not going to be the case but that ODC would be receiving the portfolio. I do not know whether it is a mystery or not; it certainly is to us. To go into a business transaction and a partnership with a financial partner in September, to be informed that the financial partner is going to be disbanded in February, followed by the fact that the financial partner is going to be replaced by an independent venture group, only to find out that you are dealing with ODC, which had no staff and no money to allocate to its commitment, is unbelievable.

Mr. Chairman: Our next witnesses are officials from the IDEA Corp. I recognize Mr. Blakley in the audience; Mr. Douglas and Mr. Maruzzo. If you could come forward, please.

Perhaps before you get into your statements, you could inform members of the committee of your roles in the IDEA Corp.

IDEA CORP.

Mr. Blakley: I am Harold Blakley, formerly president of IDEA Corp.

Mr. Maruzzo: Bruno Maruzzo, former senior manager of IDEA Corp.

Mr. Douglas: William Douglas, former senior manager, investments, IDEA Corp.

Mr. Chairman: You are all planning to make individual statements; is that your intent?

Mr. Douglas: Yes.

Mr. Blakley: I think it would be appropriate to start by refreshing--many of the ladies and gentlemen present have heard it all before, but I think it would be worth while to refresh our memories and provide a backdrop about why IDEA was created in the first place. I will try to keep it brief.

IDEA was created to sponsor the development and commercialization of technology developed in Ontario; to finance startups in high technology, which the private sector could not or would not do because of the element of high risk involved; and to put in place a staff who understood high technology and understood business, which the small and then-new venture capital firms could not afford to do.

From IDEA's inception in 1981-82 until mid-1984, the then government was critical of the pace and nature of investments made by IDEA, and in late 1984 fired the president over much criticism--and I believe rightly so, personally--of moneys being spent in the wrong places, on fancy offices and

expensive furniture and all too little on helping new, young high-tech companies get off the ground. An interim president, a banker, was appointed.

In April 1985, I was asked by the board to assume the interim presidency, to get things moving and get more done. I was asked by the board to develop a new business plan, structure a new organization and present a new budget and a new entrepreneurial mode and philosophy of operation. At that time I invited into IDEA two highly qualified and capable men as consultants to help me in this urgent task and within six weeks presented the board with a complete new plan of operation, and in the board's view, a good one. Three vice-presidents and later, in subsequent months, two more vice-presidents were dismissed, five in all.

Mr. Cannon and Mr. Logan became acting vice-presidents, with me still as interim president. In July 1985, the board confirmed my appointment as full-time president, and at that time our business plan, organization structure and budget, along with my appointment as president, were presented to the Minister O'Neil for approval by order in council. They were presented to him by our then chairman, Ian Macdonald, on behalf of the board. Along with that, I believe the election of several new directors was presented for approval.

From July 1985 until July 1986, we operated with none of the above being approved by order in council, such approval being withheld presumably because John Kruger was appointed by Premier Peterson to study the future of this crown corporation. None the less, I was instructed by the board and indeed by Mr. Kruger to proceed as if approval by order in council had been granted of my appointment, the business plan, the new organization structure, etc.

The news of a revitalized IDEA Corp. quickly spread, and applications for assistance and investment in new technological innovations, inventions and developments flooded in, many good and many unacceptable. Meanwhile, the pressure was on from me, from the board and from government to reduce our operating expenses, to do more with less, while at the same time the work load multiplied.

We did have a great staff doing a great job under tremendous pressure from the press, from the new government and from Mr. Kruger, all critically analysing us and really putting us under a magnifying glass, all with two acting vice-presidents and in effect still an interim president, with an unapproved business plan and budget.

We received, selected, analysed, researched, judged and recommended to our board many great opportunities for the province of Ontario, including Wyda and Graham. We knew full well that we were in the high-risk business and had to apply a lot of business or gut judgement. We knew that most would not be overnight wonders, but all such new ventures take time, three to five years, to develop to fruition. We knew full well too that the initial investment would not be the end, that there would be calls for second and third rounds of investment.

1440

We were quite certain of one thing; that is, our in-depth investigation of the technology, our satisfaction with it and the future for it. We believed that ultimately in each and every case there would be a point in time when the private sector would come in and take us out, and in all our deals, exit provisions were structured.

By early 1986 we had invested in some 30 to 40 new companies, which would have been some 20 to 30 more than were in place at the time we took over. We did what we were expected and even asked to do. Remember, we were still unconfirmed, unofficial management.

In late 1985 and early 1986, we the management started telling the board that the investments we were making, the new companies we were assisting and creating, needed more than our money; they needed, as much as or more than money, management help. With no disrespect to innovators, inventors, technologists, people with ideas, they usually do not know how to manage, particularly to manage success.

My VPs and managers were all good business managers. We were repeatedly telling the board that we should slow down on new investments and apply our management abilities to monitor, follow, advise and help the owners of companies we already had invested in; in other words, to make successful what we already had on our plates before going much further. However, by February 1986, we had been told that we would be wound up before and certainly by June 30.

We were convinced we had made some good investments and embraced some good new technologies. We worried about our investees. We felt a responsibility to them but also to our corporation. We were told by Mr. Kruger and others in February that in the ensuing four months there would be an orderly transfer of IDEA, its investments and its staff to ODC, that there would be somebody from ODC to clone each and every one of our managers, and that directors would be appointed to the boards of our investee companies who would take over from our own directors, including Bill Douglas.

Right to our day of death--and I might say not many people are told four months in advance that they are going to die--we did all we could with a much reduced staff to help keep track of our investments. By the end of June 1986, we had a much depleted staff. We had every reason to believe, incidentally, that Graham Software had the potential to be a winner. By June 30, we had virtually no warnings that GSC might be in difficulties, except for one occasion when the questioned appointment of Mr. Douglas as director on behalf of IDEA Corp. alerted Mr. Cannon, our vice-president, to some pending difficulties. I think that was in June. Do not forget that by June 30 we knew we were out of business and that all IDEA's investments would have had an orderly transfer to ODC.

I must say, with all due respect to Ontario Development Corp. and the problems and challenges it was facing, there was not an orderly transfer. There were not clones presented to arrange an orderly transfer of the management of IDEA Corp. to ODC. I do not fault anyone for that. I am just making an observation. We were informed on February 19, 1986, that we were dead ducks. All our staff, declining in numbers from February until June, did everything they could to co-operate fully to effect a transfer, to give files and data and backup information and impressions to ODC so that it could carry on the management of the investments we had made.

It was a difficult period. Had IDEA Corp. been able to continue, which I think it should have been able to do--as you have heard in the Wyda case, I lobbied, with no apologies to anyone, for the continuation of the corporation in some form independent of government and with the management of the investments independent of government or the civil service; fruitlessly, I might point out--had we been applying ourselves 100 per cent from February 19 until June 30 instead of waiting for the axe to fall, we might have been able

to foresee the problems which Graham Software apparently fell into. I make no judgement on those problems; I knew nothing about them and I have little information about what happened to Graham Software since June 30.

I have no further comment, but I will certainly give answers to any and all questions to the best of my ability. I think it is a disaster that need not have happened.

Mr. Chairman: Thank you, Mr. Blakley. Mr. Maruzzo or Mr. Douglas, did you wish to make any remarks?

Mr. Maruzzo: I guess the only statement I have to make is that I know very little about the Graham Software investment. While I was at IDEA, I was not involved in analysing the deal or in making any investment recommendation. Subsequent to IDEA Corp., I worked for ODC as a consultant for three months helping it manage some of the investments. Graham Software was not one of them, so there is really very little I know from a direct involvement in Graham Software.

Mr. Douglas: I would just like to make three or four quick comments, which refer to some of the statements made this morning and also to some of the findings in the Provincial Auditor's report.

On the first point, with regard to providing consulting services to Graham Software Corp. and a possible conflict-of-interest innuendo, I thought at the time the appropriate thing to do was to disclose my future plans to my immediate superiors, specifically Geoff Cannon and Mr. Blakley. Also involved were Glenn Drew, who was acting as a consultant for ODC during the interim management period in February when the decision to wind down IDEA was announced, and also Michael St. Amant, who was, I guess, the interim authority at that time.

I assessed that I had fully disclosed what my intentions were. My desire was to move on and work for Graham Software. I had a tremendous amount of faith and belief that the concept was appropriate for Ontario and I still feel that way. That is really point 1 in terms of disclosing to my superiors what my future plans were.

The second point refers to possible conflict of interest in staying on, as a member of the board of Graham Software Corp., as an IDEA Corp. nominee. When I decided to leave IDEA Corp., I asked Geoff Cannon, my superior, if I should resign from the board of Graham Software Corp. He suggested that I remain on the board.

1450

At that point, Geoff Cannon was still the acting vice-president of investments for IDEA Corp. and there was a possibility that he and the other vice-president, Daryl Logan, may have an opportunity to manage the portfolio in a private sector environment on behalf of the government, so he suggested that I stay on the board until given further notice. I agreed to do that for him. I also stayed on the boards of other companies in the IDEA Corp. portfolio until around June 30, which I guess would be three months after I resigned from IDEA Corp., at the request of Geoff Cannon once again. During that period of time, I was continuing to help, aid and assist Mr. Cannon in certain matters with the other companies, even while at Graham Software Corp.

The third point refers to the secondary investment that IDEA Corp. made

in Graham Software Corp. for the purpose of acquiring Mazdamon as outlined in the Provincial Auditor's report, specifically pages 10 and 11. The reasons and rationale given at that time were valid and realistic. I do not believe there was any misleading information given to the board. The basic thrust of the rationale was pursuant to a discussion I had with Michael St. Amant and Glenn Drew, but particularly Michael St. Amant who was a great believer in the concept and the need for a software product publishing organization internationally. He was very aware of what Mr. Graham had done in the past and it was on his recommendation that we put together a proposal for the board of directors. I put the facts together after discussing them with Mr. Cannon, Mr. St. Amant and Mr. Graham.

Those really are my three points. The only comment I can make with regard to what happened after that, the unfortunate thing that happened was that the forecasted revenues that were in the business plan, specifically for the Intellisys product, and secondarily, I might point out, with the Mazdamon product, although the investment was approved March 6, the final closing of the acquisition did not take place until the third week of May and anticipated revenues did not occur at the times when we thought they would. They eventually did start to build and as of June, July and August, revenues were increasing quite substantially up to a maximum of \$300,000 a month as of the month of August. There was still a lot of potential.

The cash-flow squeeze really occurred because the anticipated revenues were not secured in time, although there was a lot of momentum in the marketplace and a lot of product acceptance. The precision of forecasting revenues is not really an exact science. It is more of an art in the early stages of a corporation and there was still a learning curve on behalf of Graham Software Corp. It took on an enormous task. We learned a lot. I believe the momentum that had built up in the marketplace was worth supporting in the long term to achieve many goals.

That is my statement.

The Vice-Chairman: Committee members, we have not really discussed the order of questioning of witnesses. The chairman's suggestion to me before he stepped out was that we start with the gentleman before us and work in reverse order to the appearance of the witnesses. Is that agreeable? Okay.

Mr. Epp: Mr. Blakley, you indicated that you had a death notice of only four months. Where were you on October 24 when the Treasurer (Mr. Nixon) indicated in his budget that IDEA was going to die a slow and painless death?

Mr. Blakley: I am fully aware of that.

Mr. Epp: That is not four months.

Mr. Blakley: No. I realize, but--

Mr. Epp: Why would you say four months then?

Mr. Blakley: Four months was when we had final notice. There was innuendo; there were statements being made that IDEA Corp. would either change--in fact, I had a meeting with Mr. Nixon in December, following the date you spoke of, and he indicated to me that IDEA Corp. would be wound down but would be reincarnated under a different name, so I did not have any really serious indication that IDEA was going to be killed by the statement of October.

Mr. Epp: Budget statements usually are forthcoming, are they not?

Mr. Blakley: We were still under study by Mr. Kruger and we were told by him that the ultimate end of IDEA Corp. had not yet been determined.

Mr. Epp: Why were you so obsessed with the wind-down of IDEA Corp. that you could not study the problems that Graham had before it, and through Mr. Douglas know it was in deep financial difficulty and losing \$5.1 million or thereabouts of the taxpayers' money?

Mr. Blakley: There was no indication right up to the middle or the end of June that there was any difficulty in Graham Software.

Mr. Epp: None until June?

Mr. Blakley: Not that I knew of.

Mr. Epp: Mr. Douglas, you were the representative on that committee for IDEA?

Mr. Douglas: As a member of the board.

Mr. Epp: Did you not report back any financial difficulties that Graham was having?

Mr. Douglas: I reported back to Mr. Cannon. I kept him abreast of the financing activities, the equity financing the company was seeking at that point in time, after, I believe, the March-April time. I also reported back to him with the specific cash-flow analysis, I believe it would have been the middle of June when I had that meeting with Mr. Cannon at IDEA's offices outlining the fact that because of the slow development of revenues, there was going to be a pending cash-flow squeeze around September. That was when I first provided information to Mr. Cannon.

Mr. Epp: You mean to say you are aware they went through \$5 million in about one year and you were not aware the revenues were not coming in and you were not aware they were having financial difficulties all that time and you were on the board? Do you feel you were deliberately misled by Graham Corp.? They were not telling you as a member of the board what was going on?

Mr. Douglas: No. They were--

Mr. Epp: They were not deliberately misleading you, but they were misleading you?

Mr. Douglas: No. I do not think they were misleading me. As I said, the specific nature of the problem was the lack of revenues that were supposedly--

Mr. Epp: Lack of revenues? You had \$5 million. Is that a lack of revenues? There are a hell of a lot of companies in this province who do very successfully without getting \$5 million to start with.

Mr. Douglas: The nature of the goals--

Mr. Epp: You are not talking to two-year-old kids here, Mr. Douglas.

The Vice-Chairman: Mr. Epp, I think we can question the witnesses without taking on the demeanour of the Supreme Court.

Mr. Epp: I just find it difficult to understand how you can say you do not have revenues if you have \$5 million.

Mr. Blakley: That is capital.

Mr. Douglas: The \$5 million was an investment. Because it was a startup company, it was a typical stage. There are phases and stages of a company's life cycle. The initial stage with regard to Graham Software was understandably and principally one of investment, capital investment, investment to build the organization, investment to expand marketing expenditures, to build the credibility of the corporation worldwide. That is not cheap. It is very expensive to build distribution channels.

After the investment phase, one looks to the revenue phase, the revenue being revenues from product sales. It was the revenues from product sales which were delayed that caused the cash squeeze. It was always anticipated that it would be expensive to build the organization and give it credibility because you were competing in a very highly competitive marketplace.

Software publishers in the United States spend a lot more money than Graham Software ever did on distributing, marketing and launching one product. Graham Software, belatedly, in terms of Mr. Wawrew's list of achievements, had introduced four products quite successfully. The cash squeeze that occurred was because the revenues did not accrue on time, although there was tremendous momentum in July and August when the benefits of the initial investment were starting to reap. When you talk about the definition of "revenue," the \$5 million was not revenue, it was an investment required in that startup phase.

1500

Mr. Epp: You felt this particular proposal had a lot of merit and that is why you advised Mr. Blakley, through Mr. Cannon, that Graham Software should get additional funding. Is that correct?

Mr. Douglas: That is correct, pursuant to discussions with Michael St. Amant and Glenn Drew as well. There were several players involved in assessing whether there should be future funding.

Mr. Epp: If the projects--and I guess they are plural--had so much merit, why did you have difficulty getting private sector financing?

Mr. Douglas: There are several possible reasons. One of them could have been that at that time, in 1986, when the company was looking to the US for private sector funding, there seemed to be a lot of turmoil in the industry. At that time, venture capital groups were starting to retrench and that pool of capital was not as fertile as it used to be in the area of software companies, etc. There was a backlash from the fact that hardware companies were having problems, which obviously affects software firms. The traditional venture capitalists were tending to shift their investments from software to some other technologies. That may be one reason. We were caught in that period of infertility in terms of investing in software.

There may have been other reasons that we were never told directly. It is hard to judge.

Mr. Epp: The reason I asked that question is that we heard today from Mr. Graham and others about how wonderful the products were. You had the seed money from IDEA Corp. My question is, if everything was so wonderful

and you had these beautiful ideas, surely there are all kinds of companies out there and all kinds of people with all kinds of money who would like to invest in successful projects. If it was self-evident that everything was so successful and was going to be so successful, why was private money not forthcoming?

Mr. Graham: When the US venture capital companies in particular were approached in the months of March, April and May of 1986, as I outlined earlier, that was a period of time when the anticipated forecast revenues of GSC did not occur. They occurred later on, quite substantially. A typical venture capital statement is: "We are not interested in pre-venture. Once you start establishing a revenue base and we can see that the products are being sold, then we will be very interested in talking to you again at that time." They were basically saying, "Come back in September when Mazdamon has been released into the marketplace and get us all excited about that product." It is, "Prove it to me," and that is done by establishing the revenue base. They all said, "Come back in September when you can show us some revenue."

Between May and September, a lot of things were happening. A lot of management time was devoted to dealing with the Ontario Development Corp., creditors, morale, etc. It was a very difficult time between May and September.

Mr. Epp: Mr. Douglas, you went to see Mr. Cannon and Mr. Blakley about your potential conflict of interest?

Mr. Douglas: It was fully disclosed. My immediate superiors knew of my intention. Subsequent to the fact that IDEA was going to be wound down, I had a preference to work for Graham Software.

Mr. Epp: The fact that you went to see them about your conflict of interest--or in your mind your potential conflict of interest--does that in itself, the fact that you were asking about it, not indicate that you probably had a conflict of interest?

Mr. Douglas: I most certainly had a conflict of interest. My sense was that even if I did have a conflict of interest, what should I do about it? In normal circumstances, you inform your immediate superiors and try to establish whether you should do what you intend to do. So, certainly it was a conflict of interest.

Mr. Epp: You were advised by Mr. Cannon and Mr. Blakley to remain on the board as a representative of IDEA?

Mr. Douglas: Specifically by Mr. Cannon.

Mr. Epp: By Mr. Cannon, to remain on the board.

Mr. Douglas: That is right. As I mentioned earlier, there was some negotiating and some activity between Mr. Cannon and Mr. MacKinnon in terms of assigning the portfolio, if you will, to a private sector management group. One of the potential groups involved Mr. Cannon, who was already planning on moving to the venture capital industry with a \$20-million to \$30-million fund. Those negotiations were continuing when I went to see Mr. Cannon and asked him if I should remain on the board. He said, "Most certainly, until I give you further notice." That notice came not from Mr. Cannon but from the Ontario Development Corp.

Mr. Epp: That you would no longer be on the board and a replacement would be appointed?

Mr. Douglas: That is right.

Mr. Epp: Did you feel uncomfortable being on the board, working for Graham and still representing IDEA?

Mr. Douglas: That is an interesting point. I was not actually representing IDEA. I was their nominee. My representation or responsibility as a member of the board, as a director, was specifically in the best interests of the corporation, not for any individual shareholder. There is a certain point of law where you cannot be seen to be representing an individual shareholder in terms of that shareholder's best interests; you are supposed to manage and act in accordance with what is best for the company. So I was their nominee, but I was not representing IDEA, just as IDEA also had an outside nominee, Don Hillhouse.

Mr. Epp: Mr. Graham mentioned that IDEA Corp. approached Graham Software in order to solicit financial support, capital funding. Who would that have been? He is not here, so I cannot ask him. Who would that have been who approached--

Mr. Douglas: Who approached Mr. Graham?

Mr. Epp: Yes.

Mr. Douglas: That was me.

Mr. Epp: That was you?

Mr. Douglas: That is right. I believe it was early summer.

Mr. Epp: So you approached him in order to put an application in to IDEA for capital financing?

Mr. Douglas: I went to him originally to find out what his future plans were.

Mr. Epp: And then later you became an employee of that company. Is that right?

Mr. Douglas: That is correct. The reason for approaching Mr. Graham at that point in time was, as Mr. Maruzzo will verify, we were seriously contemplating an investment in a software development company based in Hamilton. I refer to the Intellisys product, which this company was developing. There was a serious consideration to invest in Micro-Master, which was the name of the firm.

One of the concerns we had and one of the areas we researched with Micro-Master was that we felt the product would have a much better chance if Micro-Master stuck with what it was good at, which was developing technical support, etc., and if there was a more experienced marketing group, if you will, to market the product internationally.

Mr. Standhope, who is president of Micro-Master, indicated to us that he was negotiating with Terry Graham in terms of Terry was planning to build an organization and would like to market the Micro-Master product. Because of that, we certainly were interested in what Mr. Graham's plans were. Also, coincidentally we had been doing some internal work at IDEA Corp., reviewing the software industry; what was most required for the industry was not

particularly startup funding or technical expertise but a vehicle for marketing its products. All kinds of software developers had been saying they needed help with marketing and getting access to markets. That independent study was going on, and at the same time we discovered that Mr. Graham, who had a track record with a previous company in marketing software products, was dealing with Mr. Standhope; it seemed to fit what we were trying to do internally to react to what the industry was saying.

1510

Mr. Epp: Was your potential employment by Graham Software discussed at that time?

Mr. Douglas: No.

Mr. Epp: When was it first discussed?

Mr. Douglas: February 19, when it was officially announced that IDEA Corp. was going to be wound down, or around that time; it may have been a few days earlier. There were obviously some symptoms as to the fact that the corporation was going to be wound down.

Mr. Epp: When did you join Graham?

Mr. Douglas: When I resigned from IDEA Corp., April 4 or 1.

Mr. Epp: Were you still influential in having decisions made by IDEA Corp. with respect to Graham Software?

Mr. Douglas: I was certainly part of the decision-making process. Part of the levels of authority that one would have to go through would instigate--

The Vice-Chairman: Mr. Epp, will you allow Mr. Philip a supplementary?

Mr. Epp: Yes, once he finishes his sentence.

The Vice-Chairman: Mr. Douglas, the Hansard people are asking if you could speak up a bit and into the microphone. Supplementary, Mr. Philip.

Mr. Philip: Mr. Douglas, you announced your decision to leave in February. You joined Graham officially as an employee in April, you said.

Mr. Douglas: I was not exactly an employee. I was providing consulting services.

Mr. Philip: All right, but as a consultant in April. Meanwhile, in March, Graham was negotiating for an extra \$2 million. Who was representing the taxpayers? Who was really representing IDEA Corp. on Graham's board of directors?

Mr. Douglas: I am not quite sure I understand the question.

Mr. Philip: Do you not feel that--

Mr. Douglas: Who was on the board of directors of Graham at the time?

Mr. Philip: Yes.

Mr. Douglas: The two nominees for IDEA Corp. were myself and Don Hillhouse, who was an outside, independent director.

Mr. Philip: So you were the nominee while at the same time joining them as a consultant? How do you serve two masters like that? Is that not a conflict of interest?

Mr. Douglas: The two masters at that point--the one master is Graham Software Corp. If I am a director of Graham Software, that is whom I represent, not the individual shareholder.

Mr. Philip: But you were having an input as to whether or not they were going to get an extra \$2 million, were you not?

Mr. Douglas: I had a certain amount of input, which I disclosed to my superiors.

Mr. Philip: I am sorry I asked more than one supplementary, Mr. Epp.

Mr. Epp: I know. I was getting into that whole thing, as you know, Mr. Philip.

How did you rationalize that you were working for the people of Ontario through IDEA Corp. and at the same time--were you being reimbursed by Graham at that time?

Mr. Douglas: No.

Mr. Epp: You were not being reimbursed?

Mr. Douglas: I had provided some consulting services prior to that, which I had been given approval for by Mr. Blakley, which I was paid for.

Mr. Epp: Which you were paid for by Graham?

Mr. Douglas: That is right.

Mr. Epp: To what extent?

Mr. Douglas: It was \$6,000 for preparing and helping prepare the offering memorandum which we were going to take to the private sector.

Mr. Epp: Was there anything you prepared for Graham to then present to IDEA Corp.?

Mr. Douglas: Was anything what?

Mr. Epp: Were you preparing anything for Graham Software, while you were working for Graham, which you ultimately provided to IDEA Corp.?

Mr. Douglas: No.

Mr. Epp: Absolutely nothing? You categorically deny that you made any preparations on behalf of Graham that you subsequently submitted to IDEA Corp.?

Mr. Douglas: Absolutely not. The offering memorandum, which I helped work on, was specifically for US venture capital groups or any groups in Canada. It was not a piece of information to present to the IDEA board-- categorically not. In the actual business plan it states that one of the purposes of raising the additional financing was to redeem and help IDEA cash in, if you will, on its original investment. We were trying to raise more money in order to repay some money back to IDEA.

Mr. Epp: Did you not see anything wrong with your working for Graham Software while you were also employed full-time with IDEA?

Mr. Douglas: No. I think the two goals were not mutually exclusive. They were both in the same interest: to help the company, which indirectly helps the owner of the shares in the firm.

Mr. Epp: But you know what ultimately happened: \$5.1 million went to IDEA, of which the people of Ontario ended up with approximately \$300,000.

Mr. Douglas: That is right.

Mr. Epp: So about \$4.8 million was wasted; for what? In the meantime, you were helping to make decisions for IDEA to give money to Graham, and Graham was trying to get as much money as it possibly could out of the government, out of the people of Ontario, with no benefit to the people of Ontario. How do you rationalize that?

Mr. Douglas: I can only say that it could possibly have been--it may not have had to have happened. I think there was enough potential--

Mr. Epp: In other words, if IDEA Corp. had not given any money to Graham in the first place, that \$4.8 million would not have been lost; is that what you are saying? It need not have happened if those ill-advised decisions had not been made. Thanks very much.

Mr. Chairman: You have one minute, Mr. Epp. We have a 20-minute--

Mr. Epp: One minute left? Okay. Mr. Blakley, how could you support the idea of Mr. Douglas working for Graham Software as a consultant and ultimately working there full-time while at the same time representing IDEA and the people of Ontario on that board? How could you support that?

Mr. Blakley: I think I can answer your question. In the first place, the first \$3 million went in during September 1985, and the second \$2.1 million was approved in March. I do not believe Mr. Douglas had any input--if he did, it was peripheral--on any recommendation by Mr. Cannon to our board on the decision to invest the next \$2 million, which happened in March, because by that time Mr. Douglas was not--

Mr. Ferraro: Who wrote the submission for the second \$2 million?

Mr. Blakley: Mr. Cannon.

Mr. Ferraro: Not Mr. Douglas?

Mr. Blakley: Mr. Douglas worked for Mr. Cannon. He may have had a part to play in it, an advisory role.

Mr. Douglas: I was responsible for collecting the facts and putting them together. Mr. Cannon reviewed them, and he signed the memorandum.

Mr. Blakley: But the ultimate decision--

Mr. Ferraro: And you suggest that is peripheral?

Mr. Blakley: He had some feed into it, but knowing Mr. Douglas well for three or four years, I have reason to believe he was acting in the best interests of IDEA Corp. He was not lobbying for--

Mr. Epp: I have one short question. Mr. Blakley, I have difficulty understanding how you can be so calm about this whole matter without understanding the implications of what you are saying. Let me just tell you something. Mr. Douglas was on the Graham board representing IDEA.

Mr. Blakley: Yes.

Mr. Epp: Additional moneys went to Graham while he was serving on the board.

Mr. Blakley: Yes.

Mr. Epp: And the reports coming back from Graham were always positive.

Mr. Blakley: Yes.

Mr. Epp: You find no difficulty in the fact that those reports were always positive, that he ultimately went to work there and yet there was a disaster waiting to happen? It was right there in front of his eyes and in front of your eyes if you had asked the questions. Do you not find anything wrong with his serving two masters and at the same time you never got a negative report of what was happening at Graham?

Mr. Blakley: By March, there was no evidence whatsoever that there was any difficulty with Graham.

Mr. Epp: Not to you.

Mr. Blakley: To anybody, by March. The problems were not evident until June or July.

Mr. Epp: They were evident if you look at the facts.

1520

Mr. Philip: Mr. Blakley, am I correct in saying that the old conflict-of-interest guidelines in the Manual of Administration would have been in effect at that time? The new ones came into effect, as I understand it, on November 26, 1986; so you would have been under the old conflict-of-interest guidelines from the Manual of Administration. Is that correct?

Mr. Blakley: I think the conflict-of-interest guidelines you are speaking of referred to government personnel and not to schedule 2 corporations. We were not issued conflict-of-interest guidelines in IDEA Corp., other than our own clause, which every employee of the corporation signed, but I do not believe they were the same guidelines.

Mr. Philip: Let me read you the relevant points in the Manual of Administration guidelines that existed at that time:

"1. Disclosure of conflict of interest: Any member of an agency who has direct pecuniary interest, either personally or through the member's family, in a matter under consideration by an agency shall at the first opportunity disclose the nature of that conflict of interest."

Are you suggesting the conflict-of-interest guideline in this instance under the Manual of Administration applied only to appointees, or would it have applied to all employees including the employees of IDEA Corp.?

Mr. Blakley: I do not know that it applied specifically to all employees of IDEA Corp. We certainly were aware of our conflict-of-interest guideline; each and every employee of the corporation signed it. In the case of Mr. Douglas, he did declare to his superior, who in turn declared to me, what the potential conflict might be. It was out in the open; there was nothing hidden.

Mr. Philip: Mr. Blakley, would you agree that the conflict-of-interest guidelines basically deal in two aspects; one is disclosure, and the other is action. Let me read you the action section:

"Any member who has declared a conflict of interest"--and he declared his possible conflict of interest; he told you about it--"shall refrain from voting on or participating in the matter in any way and shall refrain from any attempt to influence the voting in the matter of this question."

We have just heard that there was the notice that he was leaving in February, that in March there were negotiations for an extra \$2 million and that he was then doing consulting work for Graham Software. Would you not agree that an appointee or nominee to the board of IDEA is--using the words of the guidelines--voting or participating in the matter that was before IDEA Corp.?

Mr. Blakley: Certainly he had no vote; number one. In fact, when the second round of financing for Graham Software was presented to the board, I am sure I am correct in saying Mr. Douglas was not even present in the boardroom.

Mr. Douglas: I was.

Mr. Blakley: Were you there? Okay. But you did not make a presentation.

Mr. Douglas: I did with Mr. Cannon.

Mr. Blakley: It was behind Mr. Cannon; so all you were providing was factual information. You did not vote.

I agree the optics of it are not good, but at the same time, as Mr. Douglas has said, the work he did for Graham was to help IDEA Corp., because the prospectus he was working on for Graham was to get private sector financing to assist and complement the financing that was forthcoming from IDEA Corp.

Mr. Philip: It may not have looked good, but it also does not smell very good.

Mr. Blakley: I know.

Mr. Philip: I want to ask you, where would you have got the information on which you would have made the decision for the extra \$2 million if you were not getting it from Mr. Douglas?

Mr. Blakley: Mr. Douglas was not the only one involved in investigating where the \$2 million was going to go. He was a participant but--

Mr. Philip: He was the major participant, was he not?

Mr. Blakley: No. Vice-president Cannon was the major participant.

Mr. Philip: Who gave vice-president Cannon the information?

Mr. Blakley: Some of it would have been given by Mr. Douglas.

Mr. Philip: A large part of it would have been prepared by Mr. Douglas, would it not?

Mr. Blakley: I think Mr. Cannon was pretty astute and I know he would have had his own conversations with Mr. Graham and company. He would have made his own judgement in that respect with, I will say, some arithmetic being supplied by Mr. Douglas.

Mr. Ferraro: Just a quick supplementary: Mr. Blakley, I am not quarrelling with you about Mr. Cannon's ability, but I have yet to see a vice-president who actually gets his hands dirty, so to speak, from the standpoint of accumulating analysis and information, in making the presentation and indeed compiling the presentation for the vice-president to present to the board. Would that not be the normal course of events?

Mr. Blakley: No. Our vice-presidents got their hands dirty on every investment we ever made.

Mr. Ferraro: That might be a bad choice of words.

Mr. Blakley: They were deeply involved in it.

Mr. Ferraro: I am sure they were.

Mr. Blakley: There were a lot of investments being made in the year and a half, roughly, when we were asked to get going and do more things. We were deeply involved, because we did not have the staff; we were short-staffed at that time, so our vice-presidents really got their hands dirty in that respect. They got very close to the investees.

Mr. Philip: You said that not only was the decision then going to be made on information from Mr. Douglas, but also from Mr. Cannon. That is your position then, that a majority of the information would come from either Douglas or Cannon.

Mr. Blakley: It would come to me from Mr. Cannon, and Mr. Cannon in part--

Mr. Philip: But Mr. Cannon was also performing services for Graham Software. Mr. Cannon was getting consulting fees from Graham Software.

Mr. Blakley: No.

Mr. Philip: That is what the auditor's report says. It says, "We noted that Mr. Cannon had actually performed services for Graham before getting approval from Mr. Blakley, but no payments were made to him until after permission was received." That is the auditor's report.

Mr. Blakley: That is new to me.

Mr. Philip: They were both getting money from Graham. The two people you are getting all your information from, on which you are then making a major decision, are on the payroll of Graham.

Mr. Blakley: That is definitely new information to me, but I can tell you that if I knew that, I would--

Mr. Philip: Mr. Douglas, did you know that Mr. Cannon was also getting paid by Graham?

Mr. Douglas: Yes, I knew he was providing services in terms of the same prospectus that I was talking about in order to raise US\$7 million externally.

Mr. Philip: Would you not agree that a major, important role of a board of directors, even in a venture capital company--and perhaps even more so in a venture capital because it is a higher-risk company--is to make those hard-nosed decisions of whether you spend that buck or not, and in this case, there was an even greater onus on you because in one way or another you were spending public money? Can you tell me how you make an objective decision when the two people providing the information for the company, namely IDEA Corp., are both on the lamb of Graham Software? They are both getting the dessert on the side--not even on the side, openly, because you tell Mr. Blakley about it. Are you not trying to serve two masters? How do you make an objective decision?

Mr. Douglas: I was performing services for Graham Software Corp. as a consultant when I left IDEA Corp. in terms of trying to help fund the future growth of Graham Software. When the issue of the \$2-million investment for the purchase of Mazdamon came up, I was still an employee of IDEA Corp. I was acting as an employee of IDEA and, because the corporation was being wound down, disclosed my intention to work for Graham Software in the future, once I left IDEA.

1530

Mr. Philip: Let me ask you the question I asked Mr. Blakley. Do you not agree that the conflict-of-interest guidelines, under the old Manual of Administration section that was in force then, require not just disclosure but also not participating, and both you and Mr. Cannon were, in fact, participating in decisions.

Mr. Douglas: Yes. As I mentioned earlier, I was a part of the decision-making process providing information to Mr. Cannon.

Mr. Philip: I think it is important, because Mr. Blakley's testimony is rather interesting. Let me just read you this and let me ask you to comment in the light of earlier testimony. It is an IDEA Corp. memo re Graham Software Corp.

"Terry Graham, president of Graham Software Corp., has asked and I have agreed to provide certain consulting services to Graham Software Corp. Given that these consulting services extend beyond the time I would normally commit to an investee company in my capacity as vice-president, venture investment, for IDEA Corp., I will receive a fee from Graham Software for these services. Clearly, any additional time spent providing these services for Graham Software will not also be charged to IDEA Corp."

You testified earlier that you did not know that Mr. Cannon was in any way being paid by Graham. This memo, in fact, is a memo to you is telling you that. Check it. It is a memo of January 2, 1986, that told you--

Interjection.

Mr. Philip: I will provide you with a copy of the memo. I am sorry. I did not realize you did not have all the documents.

Mr. Blakley: No, I do not have any documents.

Mr. Philip: Will the clerk provide that?

Mr. Gillies: By way of supplementary, if I may, Mr. Philip, we really have to clear this up. I would like to ask Mr. Blakley a question. First, I will quote you from the auditor's report. The auditor says, "On January 2, 1986, Mr. Cannon also received permission from Mr. Blakley to provide consulting services to Graham Software in his spare time." It then goes on to say that Mr. Cannon had performed services for Graham previous to that but had not received payment. To the best of your recollection, did you, on January 2, 1986, give that permission to Mr. Cannon?

Mr. Blakley: I guess I saw it. It was written to me. I signed it, approved.

Mr. Gillies: You did sign it, so you approved it.

Mr. Blakley: Yes. My initials are on it.

Mr. Gillies: Can I just ask the auditor's staff about the statement that Mr. Cannon received permission? You are basing that statement on the fact that Mr. Blakley signed the memo?

Mr. Archer: That is right.

Mr. Blakley: I stand corrected.

Mr. Philip: You now are saying you did know that Mr. Cannon--

Mr. Blakley: Obviously I saw that memo. It had completely escaped my--

Mr. Philip: You not only knew it, but you approved of it. Is that correct?

Mr. Blakley: I initialled it. I initial a lot of things in a day's work.

Mr. Philip: Who else on the board of directors knew of this? Would the whole board have known?

Mr. Blakley: No.

Mr. Philip: So the buck stops with you. It was your decision. You were the only one who would have known?

Mr. Blakley: It certainly would not have gone to the chairman or to the board.

Mr. Philip: You are the one who is essentially responsible for approving both of these.

Mr. Blakley: That is right.

Mr. Philip: Did it not occur to you at any time that both of these gentlemen were "participating" in decision-making and that they would have a conflict of interest?

Mr. Blakley: It certainly did not occur to me at the time.

Mr. Philip: If you had it to do over again, would you agree that it is a conflict of interest?

Mr. Blakley: Yes.

Mr. Philip: That it is a conflict of interest?

Mr. Blakley: Yes.

Mr. Philip: You admit now that it was a conflict of interest?

Mr. Blakley: Yes. In retrospect, with hindsight, yes.

Mr. Philip: You are agreeing with the auditor's position that it was a conflict of interest both in the case of Mr. Douglas and Mr. Cannon?

Mr. Blakley: Particularly if they were providing advice with respect to IDEA's involvement in an investment.

Mr. Philip: What you are saying is that they were providing the advice?

Mr. Blakley: I am not sure what advice they were giving. I am not sure what advice Mr. Cannon was giving Mr. Graham.

Mr. Philip: They were the people who were giving the advice on that extra \$2 million they were asking for. Was that not your previous testimony as well?

Mr. Blakley: I am not sure in this case what Mr. Cannon was advising Graham Software Corp. on.

Mr. Philip: The advice that I am concerned about is not to Graham Software but to IDEA Corp., the advice concerning that \$2 million.

Mr. Blakley: It may or may not have related to the \$2 million. I do not know. It might have been expertise that was being given to Mr. Graham on marketing, contacts in the United States, how to do his distribution.

Mr. Philip: If I am not mistaken, you are contradicting your previous testimony again. Who would have been giving advice on that \$2 million if it was not Mr. Cannon and Mr. Douglas through Mr. Cannon? Would there have been anybody else who would have been giving that advice?

Mr. Blakley: They would be giving the main advice on it, but I am not sure that Mr. Cannon was giving advice on anything related to the \$2 million. I repeat, it might have been. I am not sure. I would have to confer

with Mr. Cannon. It might have been relating to something that was going to help both corporations. I know a lot of distributors of software in Japan or the United States or Britain and--

Mr. Philip: I do not want to discuss the world, I want to talk about \$2 million. You had to make a decision on that \$2 million based on some information. I assume you did not just say, "It would be nice to give Graham Software \$2 million." The information had to come from somewhere. You admit that was a matter that had to be considered. Was there anybody other than those two people--notwithstanding whatever other information and advice they may have given you on anything in the world, including where to buy the best grapes and cat food or lord knows what you may have asked their advice on--on this particular thing, the \$2 million, would anybody other than the two people we have just mentioned have given the advice?

Mr. Blakley: To answer your question, no, but if I might comment, in January I do not believe the second-round financing, the \$2 million, had yet come up. The \$2 million that was advanced in March was advanced for a specific purpose and that was to make a specific acquisition. I doubt that was being considered in January. I am sure of that in that respect.

Mr. Philip: What is the date of the merchant bankers' report that was referred to by the Ontario Development Corp.? Do you happen to know that or can the research provide that? What is the date on which that merchant bankers' report--

Mr. Blakley: That would have been after.

Mr. Philip: That would have been after your decisions?

Mr. Blakley: Yes.

Mr. Philip: They concluded that Graham Software lacked any kind of strategic planning. To the best of your knowledge, that was not evident at the stage at which you were looking at the information?

Mr. Blakely: Definitely not.

Mr. Philip: But the information was being filtered by two people who were getting money from Graham Software.

Mr. Blakley: At that time, we felt their strategic planning was excellent. Their business plans were good, their distribution system that they recommended and had in place was good, everything we had was good up to the time we made the decisions of September and March.

1540

Mr. Philip: I wonder if either Mr. Blakley or Mr. Douglas can inform us as to when exactly Graham came on stream. When was the first meeting? Mr. Douglas, you were hired by IDEA Corp. on June 17, 1985. Am I correct in saying the first encounter or the first toying with the idea of investing money in Graham Software comes from a meeting of July 16, which would have been just under a month after you joined? Would that be your first encounter with Mr. Graham?

Mr. Douglas: Yes. I believe it was in that time frame.

Mr. Philip: Did you have any business dealings with him prior to that July 16 meeting?

Mr. Douglas: No.

Mr. Philip: You did not know the man before or you just did not have business dealings with him?

Mr. Douglas: I never met the man, but I knew about him through his activities with Polaris, just through a general knowledge of the industry.

Mr. Philip: I assume you and Mr. Blakley were at that meeting, or was it just you?

Mr. Douglas: There were several people from IDEA at the meeting.

Mr. Philip: Do you recall who was at that meeting?

Mr. Douglas: Was the meeting at IDEA's offices? I am not sure--

Mr. Philip: I am told the first meeting was on July 16. I am not sure where that meeting took place. That is what I am trying to find out.

Mr. Douglas: If it is the first meeting, the first contact with Mr. Graham, that would have been at Mr. Graham's offices in Mississauga, and that would have been myself and Mr. Graham.

Mr. Philip: Okay. Who initiated the meeting? Did Mr. Graham call you or call Mr. Blakley? How did the whole meeting start in the first place?

Mr. Douglas: I called him.

Mr. Philip: You called him?

Mr. Douglas: That is right.

Mr. Gillies: The very first contact between IDEA and Graham was initiated by yourself?

Mr. Douglas: That is right.

Mr. Gillies: Why?

Mr. Philip: Why? That is where I was coming from.

Mr. Douglas: As I explained earlier, we were seriously contemplating an investment in a company called Micro-Master, based in Hamilton, which was developing a product, subsequently called Intellisys, for the DEC marketplace. One of the concerns we had at IDEA was the ability to market the product. They did not really have marketing expertise. They had a lot of technical expertise. One of the hurdles we identified before we could possibly make an investment in Micro-Master was to satisfy the marketing aspect of the product. Mr. Stanhope, who is president of Micro-Master, indicated that he had been having discussions with Mr. Graham with regard to Mr. Graham's new company marketing the product. Mr. Stanhope had indicated that Mr. Graham had plans to fund and start up an international publishing company for software. Obviously, I was interested in what his plans were, so I contacted him.

Mr. Gillies: Did anyone else within the IDEA Corp. suggest that you contact Mr. Graham?

Mr. Douglas: I cannot quite remember that far back. I am sure I mentioned to a couple of people that I was planning on seeing him and finding out what exactly he was up to, what his plans were for a publishing firm, etc. It was a very straightforward, fact-finding mission.

Mr. Philip: You are saying it was basically your idea to contact him and no one else's.

Mr. Douglas: Yes, it was my idea to do that.

Mr. Philip: It was your own initiative, not even a suggestion from someone else at IDEA?

Mr. Douglas: Absolutely not.

Mr. Philip: I have used up my 20 minutes. I will ask you one last question, Mr. Douglas.

Mr. Blakley has just said that in hindsight, having read the conflict-of-interest guidelines that were there at that time, you and Mr. Cannon were in fact in violation of the conflict-of-interest guidelines. In your conscience, having examined not just the disclosure section but also the action section--that is, the section that says you must refrain from participating in the matter--do you now feel you were in conflict of interest?

Mr. Douglas: Is that as a member of the board of IDEA or an employee?

Mr. Philip: Yes.

Mr. Douglas: Because I am not quite specifically associated with that section, whether as an appointee to the board or an employee; so I could not really comment.

Mr. Philip: Inasmuch as you were participating in the information and the decision-making of whether certain moneys would go to Graham and at the same time accepting fees on a consulting basis from Graham, were you not in a conflict of interest?

Mr. Douglas: Those two events were not occurring at the same time. It was subsequent to the investment that I started providing services to Mr. Graham, which I disclosed to the various parties, including Mr. St. Amant, who was instrumental in actually recommending that we take the proposal to the board.

Mr. Philip: Just a minute, though. In February, you announced that you were leaving. At that time, you knew you were taking up a consulting capacity with Graham, did you not?

Mr. Douglas: I had been made an offer by Graham Software. I had not accepted at that time.

Mr. Philip: You were in the process of accepting, and at the same time, in the next month or so, having an input into or a major influence over whether or not the company you were going to accept money from was going to get money from the taxpayers.

Mr. Douglas: I had certain other options at the time. That is why I did not accept the Graham offer immediately.

The other option was, obviously, the possibility that an outside venture group might manage the portfolio, specifically Mr. Cannon and Mr. Logan or Mr. Blakley. I was holding back on my decision to see which way the portfolio would go. I still had a very strong interest in the portfolio and wanted to work with it.

Mr. Philip: My time is up, but maybe the next questioner will go through those dates very specifically.

Mr. Chairman: You will get another crack at it.

Mr. Philip: I leave that open to Mr. Gillies, who will no doubt want to do that.

Mr. Gillies: There is nothing like having your questions preprogrammed.

I would like to go right back to the beginning of your relationship with Graham. My information was that IDEA had initiated the contact with Mr. Graham, and I was curious as to why that was done. I accept your explanation, but I would like to know, to the best of your recollection, of anybody inside the IDEA Corp. or indeed inside the government who was aware that you intended to initiate that contact and what interaction you had with anybody at the time. You said there were various people who knew about it. I just wonder whether you could tell us a bit more about that.

Mr. Douglas: There was no one specifically who knew I was making the initial contact. That was purely an initiative, a fact-finding mission, to find out what Mr. Graham was up to.

After that meeting, when we had discussed what his plans for the future were and the fact that he was keenly interested in setting up a publishing group for software in Ontario, we at IDEA had concurrently been looking at the software industry. There had been a couple of independent reports done by MITT analysing the software industry.

The assistant deputy minister at the time, Peter Barnes, was also very familiar with what the software industry's requirements were. I thought it appropriate, because it was going to be possibly one of IDEA's biggest investments, that we do some internal research as to whether the industry would require something like this, and I thought it frugal that Mr. Barnes be involved. Most of the IDEA staff were involved in giving their impressions and ideas as to whether we should pursue looking at Graham more seriously. I believe because Mr. Barnes was very supportive of the idea and the concept, we proceeded to look seriously at it.

1550

Mr. Gillies: I find that very interesting because--this is not a criticism directed at you--one of the consistent defences of the government during all these problems with the IDEA Corp. has been to stress its independent nature, the fact that it made its own decisions, arm's length from government and so on. You are now telling us the assistant deputy minister of Industry, Trade and Technology, Peter Barnes, was aware almost from the start that you had initiated contact with Mr. Graham. Is that correct?

Mr. Douglas: Not from the start. It was after I had done some independent research as to what the ministry had looked at. It may have been a week or two, it may have been 10 days or whatever. I suggested to Mr. Blakley that it may be a good idea to get the assistant deputy minister involved because he was responsible for more than just IDEA, it was the industry itself.

Mr. Gillies: The simple point I am making is that within weeks of the initial contact, a senior official within the government was aware.

Mr. Douglas: Yes.

Mr. Blakley: Who was on our board of directors.

Mr. Gillies: That is right.

Can you recall comments or suggestions made to you regarding developing an investment with Graham that may have been forthcoming from Mr. Barnes or indeed from anyone else within the ministry or the government?

Mr. Douglas: No. The comments Mr. Barnes made at a forum we had in IDEA's boardroom, which involved myself, Mr. Blakley, Mr. Cannon and several others, were that he was very familiar with Mr. Graham and knew he had been successful in the past with marketing of software products; because he was closely associated with the software industry through the various reports, he was quite aware of his success and basically approved of the concept.

Mr. Gillies: You would have known and presumably Mr. Barnes would have known that Mr. Graham was a partner in a company called Polaris Computer Systems until approximately the end of June 1985.

Mr. Douglas: Yes. I was aware that Mr. Graham was a partner of Mr. Schwartz in Polaris.

Mr. Gillies: So you knew that Mr. Schwartz was his partner. Did that come up at all in your discussions with Mr. Barnes or other government officials?

Mr. Douglas: No, I do not think so. It came up with Mr. Graham when I originally met him. Obviously, I was very aware of the story of Polaris. I asked Mr. Graham what Mr. Schwartz was up to--I knew he was involved in some museum--and Mr. Graham categorically said that he was no longer a partner of Mr. Schwartz and that he was off on his own independent plans.

Mr. Gillies: Mr. Schwartz was actually not a stranger to the IDEA offices, was he? He visited on occasion. This was testimony given to us last year during the Caplan inquiry.

Mr. Douglas: The first time I saw Mr. Schwartz at the IDEA offices would have been in the month of February when Michael St. Amant was the interim authority, I will call him, acting on behalf of MITT and who was in the offices of IDEA. Mr. Schwartz was visiting Mr. St. Amant.

Mr. Gillies: The point is simply this--and I think I can anticipate your answer--at the beginning of the development of a relationship with Graham Software, were you given an indication from anyone inside or outside the IDEA Corp. that it would be a good idea to give this one a push because of the relationship between Mr. Graham and Mr. Schwartz?

Mr. Douglas: No, absolutely not.

Mr. Gillies: Okay. One of the major concerns that comes out in the auditor's report is about the spending that was going on in this company. I assume you, as a director of the company, were aware of the kinds of expenditures that were going out of Graham Software.

I would like to read you a couple of quotes. If you want to check the evidence book, they are from Mr. Biddell's report, which is as yet unpublished, but we have excerpts of it here. Mr. Biddell says things like "the information made available to the IDEA board and the monitoring of the investment up to the time the ODC staff became involved...left a great deal to be desired." Do you have any comment on that?

Mr. Douglas: I would probably like to hear from Mr. Biddell what his rationale was for saying that.

Mr. Gillies: Somewhat more specifically, if you look at the affidavit that was filed in September of last year by ODC with regard to the upcoming legal action against Graham, the affidavit states, "We believe the continuing payment to shareholders at these rates"--and it is talking about what it considers to be excessive rates of expenditure by the company--"is totally unjustified and can only be explained as an attempt to fully consume all of the resources available to the company."

I see this as a very serious charge; so I ask you, during the period of time that you were associated with the company, do you believe there were expenditures being made by that company in an effort to exhaust its financial resources?

Mr. Douglas: Definitely not. In one particular instance--if I can think for a second--I believe it was the month of May, when the company, Graham Software, was starting to get the feeling that the revenues were slipping somewhat; they were not coming in as quickly as anticipated, but it was still in the midst of tremendous momentum with the potential. I had conversations with Mr. Graham outlining that we should seriously look at some expenditure cuts.

One of the things Mr. Graham did at that time--I had suggested that a 15 per cent cut of the senior executives and some other cuts might be appropriate; rather than doing that, Mr. Graham maintained the salaries of the other officers, but from May 1 right through 1986 until February 1987, I believe, he did not take any money out of the company at all.

He forwent his salary, in other words, for that period of time from May 1 to February. He forwent his salary and paid for his own expenses without taking moneys out of the company. I do not think that would necessarily rationalize the fact that they were trying to exhaust the funds. If he were trying to do that, he would have kept taking his salary.

Mr. Gillies: ODC feels, though, that the salary and expense packages being used by Graham executives were unusual, out of line with the norm for that size of company. At first blush, anyway, that would seem--

Mr. Epp: Unusually high, not unusually low.

Mr. Gillies: Unusually high; sure.

The evidence we have before us--for example, Mr. Graham was drawing a salary of \$168,000 a year, a car allowance of \$6,000, benefits of \$16,800,

expenses of \$24,000, en Route, \$25,000--I am not sure what that is; I guess it is travel expenses--

Interjection: A credit card.

Mr. Gillies: --for a total package of \$239,800 a year. Some of the other executives' packages seem high. I just wonder whether as a director, with the responsibility that directors have for the financial operations of a company, you felt these were particularly rich packages for executives of basically a small company.

Mr. Douglas: When the original investment was made, the salary negotiations for the future were discussed with Mr. Graham and Mr. Cannon. Having set those salary levels, as I said, pursuant to the potential problems we were facing in May or June, I suggested the salaries may have been too high, and effectively, Mr. Graham did not take any money out of the company from May 1; so he did respond to the fact I was concerned there should be some expenditure cuts.

Mr. Gillies: I am looking at some of the expense forms that have been tabled with us too. They seem extremely high. This company, by its own testimony before the committee, had a cash-flow problem--its revenues were not developing as it had anticipated--yet we have meal expenses for three or four people that all seem to average over \$200. Mr. Douglas, you are involved in quite a number of these. Did that not concern you?

Mr. Douglas: Those expenses were never paid until February 1987. Part of the decision was to not pay those until we got the equity investment and we would have to negotiate those sorts of things with the new venture capital group that would be coming in.

Mr. Philip: What was that date again?

Mr. Gillies: February 1987.

Mr. Philip: They were not paid until February 1987?

Mr. Douglas: That is correct. The end of January-February 1987.

Mr. Gillies: These balance sheets we have before us enumerate meal, entertainment and travel expenses and so on month by month. You are telling us that while these records were kept, Mr. Graham, for example, was not reimbursed for these expenses.

Mr. Douglas: That is correct.

1600

Mr. Chairman: If you would permit a supplementary, Mr. Gillies, that still does not answer your original question with respect to the level of those expenditures. I would like to hear that addressed.

Mr. Douglas: The travel expenditures would have been high because of the markets we were involved in and the fact that we had offices in the US and Europe and we were opening up distribution channels in Australia and New Zealand. I guess the level of expenditures was based on those activities.

Mr. Chairman: You do not think you were living pretty high on the hog?

Mr. Douglas: Myself?

Mr. Chairman: When you look at--I think Mr. Gillies mentioned \$200 and \$300 lunches.

Mr. Douglas: I have not seen the individual specifics of it.

Mr. Chairman: You were involved in a number of those lunches. You know what you consumed.

Mr. Epp: You had to see them. You were there.

Mr. Douglas: I have not seen the specific item that is being referred to.

Mr. Gillies: I could certainly share it with you. I do not want to beat it to death, but in the month of February, for example, lunch or dinner--it does not specify which--with yourself and, it would appear, two other people and Mr. Graham was \$237. Another dinner, two days later, with four people was \$232. It looks like three in a row in the first week of March. I do not think any of us would disagree that there are legitimate entertainment and meal expenses associated with any business, but this seems awfully lavish for a company that was struggling.

Mr. Douglas: In actual fact, these expenses were not submitted until October 1986, I believe. That was the first time I saw these. As I said, Mr. Graham was not submitting his expenses on a monthly basis, because he was not taking any money out of the company.

Mr. Philip: Surely, though, you had some idea. This is a employee expense account dated the fourth month--it would be April 1986; so it probably would be March 1986--in which Terry Graham is claiming \$325.60 for you, "Abe S."--I assume that is Abe Schwartz--"Bill D. and Michael D." If you are participating in that kind of lunch or dinner, you know that the money is coming from somewhere, that it is coming from the company and that Mr. Graham is not likely just being benevolent and nice to you in taking you out for dinner all the time. You knew it was coming out of the expense account. Did it not strike you then as somewhat lavish spending of money? There are a whole series of these.

Mr. Douglas: I did not know it was coming out of the company account.

Mr. Philip: Where did you think it came from?

Mr. Douglas: His personal expenses.

Mr. Philip: Go down the list--just in that one month alone, there is \$95.84 that has your name on it; \$126.55 that has your name on it and "Nancy H." Who would Nancy H. be?

Mr. Douglas: Nancy Herckimer, executive assistant to Mr. Graham.

Mr. Philip: They are fairly large bills. I have just come back from a committee in which we got \$27 a day to buy meals, and we found we spent a lot more than that. I did not eat those kinds of meals when I was on the committee.

Mr. Douglas: As I said, I did not see these expense reports until September or October, and I really did not know what Mr. Graham was intending

to do with any expenses he was having. I assumed it was partially out of his own pocket, and certainly when expenses were directly attributable to company business, they would be submitted and reimbursed.

Mr. Gillies: When you were being entertained by the officials of this company, did you feel you were present as an official of the IDEA Corp. or as a member of the board of that company? Recognizing that IDEA was a schedule 2 crown corporation, do you think it is something we would want to see generally for government officials to be entertained fairly lavishly on a regular basis by private companies with which they are dealing?

Mr. Douglas: Probably not.

Mr. Gillies: Again, in fairness, you said earlier you thought there was a conflict in the situation, and this just becomes part of it in your mind.

Mr. Douglas: I would think so.

Mr. Gillies: Can you tell us those occasions on which Mr. Schwartz was present? If it were purely a personal thing, it is none of our damned business what Mr. Schwartz was doing there or why, but the fact it was expensed as a business expense leads me to think that he must have been making some input of value to the company, otherwise the meal would not have been expensed. What was the nature of Mr. Schwartz's involvement in those consultations, those dinners or lunches?

Mr. Douglas: I am trying to remember the times when I was there with Mr. Schwartz. Is there a day on there, Mr. Gillies?

Mr. Gillies: Yes, March 3, 1986. It was a meal with yourself, Mr. Schwartz, Mr. Graham and a Michael P or D--whoever that is--at the very top of the March sheet.

Mr. Douglas: Okay. Certainly, Michael P. would be Michael Patrick, who was doing some work in Quebec as a consultant for Graham Software. I cannot recall the specific get-together and I cannot recall ever discussing Graham Software business with Mr. Schwartz.

Mr. Gillies: Do you think he was there perhaps in an advisory capacity to Mr. Graham?

Mr. Douglas: Terry may have wanted to introduce Mr. Schwartz to Michael Patrick for some reason. I wish I could remember. Believe me. It is one of those instances where I cannot remember.

Mr. Chairman: I would remember a \$90 lunch.

Mr. Gillies: Actually, you might pretty quickly forget a \$90 lunch.

Mr. Epp: That must have been McDonald's.

Mr. Douglas: This says parking and gas. This confuses me, because usually if I had the actual expense report, there is the rationale and reasons and expenses attached to it. That is why I am finding it difficult to remember what that was for. If I had a hint from the expense report--

Mr. Epp: Was it always the same place where you were eating?

Mr. Douglas: I really cannot remember. It is difficult for me to remember.

Mr. Gillies: There are a couple of things we have to establish. This becomes important for a few reasons. First, we have to establish that the entries are valid and that the meal took place. To the best of your recollection, there was such a legitimate expenditure?

Mr. Douglas: Yes, all the receipts were actually attached to this report.

Mr. Gillies: Okay. So at about the time the \$2-million approval was being considered, there is a meal held with, among other people, Mr. Schwartz. Was the approval of the \$2-million investment discussed at that meal? Was that part of the rationale for it taking place?

Mr. Douglas: Absolutely not. No, categorically.

Mr. Gillies: At the time the initial approval was being considered for the Graham investment, I have information that a member or members of staff expressed concern about the approval in the first place. Is that your recollection, and if so, do you recall who expressed concerns or reservations about this one going ahead?

Mr. Douglas: The only concern I can remember would be the fact that we may have been straying from the mandate of investing in technology companies in that it was a move whereby we would be investing in a marketing publishing group.

Mr. Gillies: As opposed to a technological development type of company.

Mr. Douglas: Right. There were several discussions held about that concern and whether we were actually doing something for the province or the industry by having a marketing publishing group who, indirectly, would help the software developer in his little lab producing his software. I can put that in the context of one of the reasons I suggested that Mr. Barnes be involved, because it was that sort of decision that required some direction from what he had learned from the industry on what was required. It was somewhat of a problem with some concerns and that is why we did a lot of discussion and research on it.

Mr. Gillies: My last question would be to ask the same question of Mr. Blakley and Mr. Maruzzo. At the time this approval process was going on, did anyone within your organization say to you, Mr. Blakley: "Hey, boss, I do not think we should do this one. I have problems with this one"? Mr. Maruzzo, as general manager, do you recall reservations being expressed and what were they?

Mr. Blakley: I will answer first. Yes, a number of the directors expressed concern, as I did, as the chairman did, that this was a departure from investing directly in a technology. We wondered whether this was within our mandate. Peter Barnes was part of the discussions over a period of time before we finally made the September decision. It was concluded and debated at the board meeting, and before, that by making this investment in a marketing organization we were helping the small developer of software get a market for his products through this organization. Therefore, we felt it was within our mandate to make this investment.

Mr. Gillies: At the staff level, Mr. Maruzzo, do you recall reservations being expressed on this one?

Mr. Maruzzo: I talked to Mr. Douglas about the deal a number of times and I guess I was of the opinion that it was certainly a different type of investment than we had done in the past. I have been with the corporation almost from the beginning and we had invested, up to that time, in only product-oriented companies; companies that were going to produce a tangible product. We had seen a number of investments in the service sector, marketing and distribution companies or consulting companies, and had turned them down because they were service oriented.

When I talked to Bill, I told him that in the past we certainly would not have considered that type of investment. However, I think that type of company would serve a useful purpose. One of the problems in the software sector is marketing and distribution, and that seemed like an appropriate vehicle. I guess the senior staff saw that it would be an appropriate investment. It would be a slight change from what we had done in the past.

Mr. Gillies: You are telling us now, by way of conclusion, that other similar ventures in terms of marketing, etc., had been brought forward in the past and had been refused.

Mr. Maruzzo: This was prior to Mr. Blakley coming on board.

Mr. Gillies: Do you recall, in the period of time during which this one was being approved, a push being put forward from above that this one had to go?

Mr. Maruzzo: Not really. As I said before, I was not directly involved in the investment. I know Mr. St. Amant was very high on the investment. He had done a lot of research into the software area and he had identified marketing and distribution to be a problem. He felt this would be a good investment.

Mr. Ferraro: I want to start in a different vein. Mr. Blakley, the mandate of IDEA is somewhat unique. Mr. Archer, the auditor, says he has been involved for 15 years, the last five as auditor, and to say the least, IDEA's mandate was unique from the standpoint of its dissection from the government, specifically. Would you agree with that, that you were essentially your own board, your own entity and that was perhaps one of the fortes of IDEA?

Mr. Blakley: Yes. We were schedule 2 and we did not report to the ministry or the minister or get his approval for anything except, as I say, annually we had to submit our budget. When I came in, we submitted our business plan, budget, reorganization and structural plan and that was a formality we went through, through the chairman.

Mr. Ferraro: Since the Liberal government took over on June 26, 1985, have you had any correspondence whatsoever from a minister or anybody in the government as far as the functions of IDEA Corp.?

Mr. Blakley: No, sir.

Mr. Ferraro: None whatsoever?

Mr. Blakley: Correspondence.

Mr. Ferraro: Where would that correspondence be?

Mr. Blakley: Do you mean correspondence or phone calls?

Mr. Ferraro: Any direction, phone calls or anything like that.

Mr. Blakley: No elected representative. The first time I--

Mr. Ferraro: Did ODC call you?

Mr. Blakley: No.

Mr. Ferraro: There was nothing from ODC either?

Mr. Blakley: No. We had no correspondence or--

Mr. Philip: Did Abe Schwartz call you?

Mr. Blakley: No. I have had meetings with Abe Schwartz but not on any investments, as my record shows.

Mr. Ferraro: So you really ran your own show, so to speak?

Mr. Blakley: That is right.

Mr. Ferraro: I think you said you had approved--I stand to be corrected--somewhere around 40 loans?

Mr. Blakley: Thirty to 40 investments, yes. Those are investments, loans or grants, small and large.

Mr. Ferraro: Did you have an annual budget?

Mr. Blakley: We submitted an annual budget.

Mr. Ferraro: How much was it for the last year?

Mr. Blakley: Some \$20 million.

Mr. Ferraro: Roughly how much of that money would be used for actual loans as opposed to operating costs? Do you know?

Mr. Blakley: The operating expenses were roughly \$2.5 million.

Mr. Ferraro: So you had about \$17.5 million to lend out?

Mr. Blakley: Yes. We went through two budget years, not one; part of two.

Mr. Ferraro: Was the loan to Graham Software a typical loan, save and except there was some confusion among staff about the mandate, "Are we getting too far away from it or can we fit it in"?

Mr. Blakley: It was untypical in that it was one of the larger ones we made.

Mr. Ferraro: Was it typical from the standpoint of security taken and the administration of it?

Mr. Blakley: Yes, in terms of share participation.

Mr. Ferraro: As security, you mainly took an equity position and took shares?

Mr. Blakley: Yes.

Mr. Ferraro: I realize it is a pre-venture type of thing, but you never took any hard assets per se as security?

Mr. Blakley: No.

Mr. Ferraro: On any of your 40?

Mr. Blakley: No, I do not think we took any hard assets. Any hard assets were pledged to secured lenders because we were typically in an unsecured position.

Mr. Ferraro: When you made the loan of \$3 million, I think you did it on the basis of two systems they were working on, is that correct?

Mr. Blakley: As I recall, yes, two or three.

Mr. Ferraro: Two or three, and the development of the marketing and all the rest of it?

Mr. Blakley: Yes.

Mr. Chairman: Mr. Ferraro, do you mind a supplementary?

Mr. Ferraro: No, if it is brief.

Mr. Philip: You said it was atypical or untypical in the sense of the size of it. In fact, it was roughly one third of that one year's budget, was it not? Was there any other loan that was anywhere comparable to that?

Mr. Blakley: The \$3 million was in one year. The \$2 million would have fallen into the next fiscal year and would have been disbursed in the next fiscal year, so the \$3 million would have been a pretty high percentage.

Mr. Philip: If it was not one third, it would have been 20 per cent with a carryover of an extra \$2 million into the next year.

Mr. Blakley: Yes, but we had two years, each with a budget of roughly \$20 million.

Mr. Philip: You did not answer the second part of that question though.

Mr. Blakley: I am sorry.

Mr. Philip: The second part was, was there any other loan in the history of IDEA that came anywhere near close to this?

Mr. Blakley: Yes, the Wyda one.

Mr. Gillies: Wyda was the second largest.

Mr. Philip: But that was only \$3.7 million.

Mr. Blakley: Yes. Cyberfluor was \$2 million. There were a number in the category of \$1.5 million to \$2 million.

Mr. Philip: So the two largest ones went kaput?

Mr. Blakley: They have been made kaput.

1620

Mr. Ferraro: Can I get back to my line of questioning? On the original investment, you made it on the basis of essentially two investments, I guess, from the standpoint of Graham Software. Do you recall the financial position of Graham Software at the time? Maybe I should ask Mr. Douglas.

Mr. Douglas: It was basically a startup company. There was a conceptual investment startup.

Mr. Ferraro: How long had it been in existence?

Mr. Douglas: I think it was officially legally incorporated February 1985 as a precursor to raising money and getting on with starting up the actual activities of the company. So there was no actual business going on. It was simply an incorporation, as I understand it.

Mr. Ferraro: Mr. Blakley, do you recall why the name was changed when the loan was granted?

Mr. Blakley: From?

Mr. Ferraro: From Graham Software Inc. to whatever it was.

Interjection: It was always Graham Software while I was there.

Mr. Douglas: It was changed from Graham Software Inc. to Graham Software Corp., I believe. Mr. Wigdor--

Mr. Ferraro: It does not matter. I can ask him later on.

The question I want to get to is this. Maybe it is my banking background that leads me to this. I find it intriguing. You granted a \$3-million equity investment to a startup company, pre-venture, high risk. You subsequently granted a \$2-million equity investment.

Mr. Blakley: For a specific purpose.

Mr. Ferraro: For a specific purpose, yes. You knew that the vice-president and one of your investors were employees not only of IDEA Corp. but were consultants with Graham Software--

Mr. Blakley: Not at the time of the first.

Mr Ferraro: Not at the time of the first one; the second one.

Mr. Blakley: Yes.

Mr. Ferraro: You used Mr. Wigdor as solicitor for the transaction of funds in both cases. Is that normal?

Mr. Blakley: We did? Our solicitors were always Blake Cassels.

Mr. Ferraro: Did you not use Mr. Wigdor--and I stand to be corrected; I may be wrong--

Mr. Blakley: As IDEA Corp.'s lawyer?

Mr. Ferraro: For the advancement of funds and release from escrow and trust accounts and so forth.

Mr. Douglas: If he was appointed the escrow agent, I am sure it was in agreement with Blake Cassels, who are our legal counsel. It is typical to appoint whomever as escrow. There is no problem on behalf of Blake Cassels.

Mr. Blakley: Everything we did had to be approved by Blake Cassels.

Mr. Ferraro: Then I stand corrected. I was under the impression from my reading that Mr. Wigdor had acted for IDEA. That clarifies that.

Mr. Douglas, I have just one last question and I want to give you the opportunity to respond to this. You were hired in June 1985. In October 1985, four months after the Liberal government took over, the Treasurer (Mr. Nixon) came up with the announcement that he was winding up IDEA Corp. Is that the first you knew of it?

Mr. Douglas: Is that the speech from the throne?

Mr. Ferraro: Yes.

Mr. Gillies: No. It was the budget.

Mr. Ferraro: The budget. Pardon me.

Mr. Douglas: That was when?

Mr. Ferraro: October 1985, four months after the Liberals took over, the Treasurer--and understandably so from my perspective--said to get rid of IDEA.

Did you know any of the principals of Graham Software before you were hired by IDEA?

Mr. Douglas: No.

Mr. Ferraro: How did you get to know Graham Software?

Mr. Douglas: I think I have already answered that question.

Mr. Ferraro: I am sorry, I did not hear it if you did.

Mr. Gillies: In response to my questions, he said that he had heard about Mr. Graham's efforts through a Hamilton company.

Mr. Ferraro: I want your reaction to this because I think it is only fair to give you the opportunity to respond. One could assume that you were hired, you subsequently were involved directly--in my view--in the preparation and submission of both investments, you knew shortly after being hired that you were going to be, in essence, out of a job.

Mr. Douglas: Not in October 1985.

Mr. Ferraro: In February?

Mr. Douglas: I think it was February 19.

Mr. Ferraro: So you knew in February, which was before the second installment, if you will, the \$2 million that was subsequently approved by the government?

Mr. Douglas: That is right.

Mr. Ferraro: What would you say if someone said, "You knew you were going; so you figured you might as well do whatever you can to get money for Graham and they might hire you on"? How would you react to that? I am saying this in all fairness.

Mr. Douglas: That is one interpretation that could be established in reviewing the events.

If you were to look at the records or the memoranda that were sent to the board of directors, the \$2-million investment in Mazdamon was not originally on the board of directors' agenda when the various investments were discussed and what was going to be on that agenda for that board meeting. Originally, the Graham Software \$2-million investment in Mazdamon was not on that list. At that time, as an IDEA employee, I was actively helping Graham Software with the prospectus that we had prepared, on which I had been working as a consultant for Graham Software. We were actively visiting venture capital groups in the United States and Canada.

On February 19, it was announced that IDEA Corp. would be wound down. An interim management team consisting of Glenn Drew and Michael St. Amant was appointed to come in and review all the investments. Each individual manager, Mr. Maruzzo included, was asked to talk about the various investments with Michael St. Amant and Glenn Drew to review the status of the portfolio.

I think it was in that subsequent week of February 19 that Michael St. Amant and Glenn Drew asked me questions about Graham Software Corp. and the status of the activity. I informed them that I was actively trying to help the company to raise funding outside, the purpose of which was to redeem some of the shares that IDEA had--I think that is outlined on page 10 of the auditor's report--and help with the acquisition of Mazdamon and other working capital requirements.

Mr. Ferraro: How much did Mazdamon that cost?

Mr. Douglas: The total purchase price was \$3.25 million, but the upfront cash portion was \$1.75 million.

The discussion at that time was in the context of: "How are things going with the US investments? How are things going with Mazdamon?" I said: "They are not going as fast as we would like in terms of raising the additional equity funding. The company has been looking at Mazdamon for a while." It was suggested by Michael St. Amant, because he was a believer in the concept, that it might be a good idea for us to continue to support Graham Software by making an investment in order to acquire Mazdamon and keep it in Ontario. There had been some previous suitors from the United States in acquiring the product.

It was based on his recommendation. He asked me if I could put together enough factual information about Mazdamon in order for the board to review the merits of allowing Graham Software to buy that product and continue with what I call its conceptual strategy of building an organization for marketing software. Michael St. Amant was in the board meeting as an observer. It was not contemplated originally to have it on the agenda. It was subsequently put on belatedly and information was couriered overnight to the members of the board.

Mr. Ferraro: At whose insistence?

Mr. Douglas: Michael St. Amant's.

1630

Mr. Gillies: Let me ask a supplementary. I am looking at the minutes of the March 6, 1986, meeting. I just want to see that this is correct. It says here that Bill Douglas introduced the proposal for a further \$2-million investment in Graham Software Corp. to finance the acquisition, etc., of Mazdamon. I thought it was said earlier that Mr. Cannon had made the presentation but that you were present. Can you tell us if the board minutes are correct, that it was yourself who made the proposal?

Mr. Douglas: I made the verbal proposal--

Mr. Blakley: The presentation.

Mr. Douglas: Yes, the the presentation. Mr. Cannon was there with his comments--.

Mr. Blakley: And the vice-president would make the recommendation.

Mr. Philip: May I just follow that up? As I recall your testimony, Mr. Blakley, you said that Mr. Cannon made the input and that he made the presentation. That is what I recall you saying.

Mr. Blakley: The recommendation, yes. It was standard procedure in IDEA for the technical person involved, the investment manager under the vice-president, to make the technical presentation, giving the board all the details, the rationale, the results of research, etc.--the technical presentation. Then it was customary and almost always the case that the vice-president in charge of that particular investment, be it Mr. Logan or Mr. Cannon, would follow up the technical presentation with an overview for the board, and his recommendations. Then they might ask the president for his recommendation; does he recommend the investment? The board would then deliberate and discuss fully--

Mr. Philip: Why did you not tell us that when I asked you those questions earlier? It took five questions to get you to meagrely admit that Mr. Davis may have had some influence on the \$2-million loan application.

Mr. Blakley: Do you mean Mr. Douglas?

Mr. Philip: I mean Mr. Douglas. I am sorry. I said Bill Davis instead of Bill Douglas. May Bill Davis forgive me for it.

Mr. Blakley: Mr. Douglas would make the presentation--

Interjections.

Mr. Chairman: Mr. Ferraro still has the floor. We will let Mr. Blakley respond to that and then go back to Mr. Ferraro.

Mr. Blakley: May I finish what I was going to say?

Mr. Chairman: Go ahead.

Mr. Blakley: There is a difference between a presentation and a recommendation. The technical person involved, in this case Mr. Douglas--I do not have this in front of me; I am trying to go from memory--would have made the presentation to the board, and the recommendation would have been made by the vice-president.

Mr. Philip: You were really skating around it earlier, were you not?

Mr. Chairman: Mr. Ferraro, you have the floor.

Mr. Gillies: There is a problem with that.

Mr. Chairman: We will have an opportunity when Mr. Ferraro has completed his questioning.

Mr. Ferraro: Mr. Blakley, I am curious. Can you recall, when you increased the commitment from IDEA--first, when you made the \$3-million commitment, was there anything in that commitment that the board approved that indicated more money would be forthcoming?

Mr. Blakley: No.

Mr. Ferraro: Nothing.

Mr. Blakley: No, not to my recollection.

Mr. Ferraro: All right. Subsequently, in March 1986, you made a further \$2-million investment. Do you recall the state of the financial statements of Graham Software at that time?

Mr. Blakley: No. I do not recall.

Mr. Ferraro: You do not recall?

Mr. Blakley: No.

Mr. Ferraro: Mr. Douglas, do you?

Mr. Blakley: You are talking about two years ago, and I have not had a chance to review files, because I do not have files.

Mr. Ferraro: I would have thought if you were coming before a government committee, you might have wanted to peruse your files to refresh your memory.

Mr. Blakley: They are not accessible to me. I phoned the legal counsel we had previously for the files, and I had no response.

Mr. Ferraro: That is fine. Okay. Mr. Douglas, do you recall, by chance?

Mr. Douglas: Yes. I recall that the expenditure level was plus or minus five per cent against what was expected up until probably the end of January. Also, at that point in time we were still in the investment phase and revenues had not started to come in; they were anticipated to start in February, March, April. So there was not much of a financial statement; it was really expenditures to date against budget--no ostensible revenues at that point in time.

The key things we were looking at were what had been done in the marketplace in launching the products, and we were satisfied that sufficient progress had been made.

Mr. Ferraro: Part of your submission for the extra \$2 million then was not based on the financial performance, if you will, of the company when the original \$3 million was granted?

Mr. Douglas: The only financial performance one could comment on would be the expenditures to date as opposed to budget. The forecasted revenues, as I said, were not supposed to kick in until February, March, April, May. We were confident that enough legwork and product acceptance had been made that the revenues would be there.

Mr. Ferraro: The expenditures were within five per cent--

Mr. Chairman: This is your last question.

Mr. Ferraro: The expenditures were plus or minus five per cent when you made the further commitment of \$2 million. Is that what you are saying?

Mr. Douglas: To the best of my recollection, the expenditures, as I knew them to about the middle of January, were plus or minus five per cent against budget.

Mr. Ferraro: Why would you say to the middle of January when you made the presentation in March?

Mr. Chairman: I will let you answer that and then we are moving on. Go ahead.

Mr. Douglas: Obviously, the statements for February would not be ready until towards the end of March, so I did not have statements for February. I had enough knowledge of what had happened in January.

Interjection: But everybody--

Mr. Chairman: Mr. Philip is declining his opportunity. Before we go to Mr. Gillies, I have a couple of quick questions.

Mr. Philip: I think Mr. Gillies had started to ask the same question--

Mr. Chairman: Mr. Douglas, you mentioned earlier about meeting Mr. Schwartz in Mr. St. Amant's office. What were the circumstances surrounding that occasion?

Mr. Douglas: I did not actually meet with him. I was passing the office and happened to see Mr. Schwartz in the office with St. Amant.

Mr. Chairman: So you did not have a discussion with him at that time?

Mr. Douglas: No.

Mr. Chairman: Mr. Blakley, what was St. Amant's reporting relationship with you?

Mr. Blakley: With me? No reporting relationship. After the announcement of February 19 that IDEA Corp. was going to shut down as of June 30, since Mr. Barnes's departure, we had had no representation from the ministry at the board table. Immediately upon the announcement by Mr. Kruger that we were going to be wound down, to effect an "orderly" transfer from IDEA Corp. to the ministry--at that time we did not even know it was going to be ODC; we thought Innovation Ontario might be the successor--Mr. St. Amant then sat in as an observer.

Mr. Chairman: He was a link between the ministry and IDEA.

Mr. Blakley: That is right.

Mr. Chairman: Did he ever discuss the Graham Software project with you?

Mr. Blakley: No.

Mr. Chairman: But he did discuss it with Mr. Douglas, Mr. Maruzzo and others?

Mr. Blakley: Mr. St. Amant was working constantly and very diligently with all the people, the managers, the troops, as we call them, to familiarize himself, along with Glenn Drew and maybe one or two others who came down from the ministry with Michael St. Amant, with the investment.

Mr. Chairman: We appreciate that. In any event, he was very enthused about the project.

Mr. Gillies: I am a little confused as to who was supposed to do what with these presentations. To go back over the recent testimony, Mr. Blakley, you said the initial presentation of a proposal would not be made by a vice-president but by the person doing the technical work on the proposal.

Mr. Blakley: That is right.

Mr. Gillies: Mr. Douglas made the presentation to the board, according to the minutes. But if we flip over, we find the written proposal, also dated March 3, to all directors, entitled "Graham Software Corp.: A Proposal to Invest an Additional \$2 Million," is not from Mr. Douglas; it is from Mr. Cannon.

Mr. Blakley: The submission to the board would be made by the vice-president. That submission would have been prepared by Mr. Douglas for--

Mr. Gillies: For Mr. Cannon's signature.

Mr. Blakley: Yes, and Mr. Cannon would send it out.

Mr. Gillies: If a vice-president would not normally put forward a proposal, why is the very next proposal, which was for a \$1-million additional

investment in Telepanel Inc., made by Mr. Cannon at the board meeting of March 3? "Mr. Geoff Cannon introduced this proposal for an additional investment of \$1.0 million in Telepanel Inc., bringing IDEA's total investment to \$3 million." It is right in the minutes. Here is a case where a vice-president made the presentation.

Mr. Blakley: That could have been an anomaly. Telepanel was already an investee. The original Telepanel investment, the technical part of it, definitely would have been presented to the board by a technical person, with follow-up and additional information given by the vice-president responsible.

1640

Mr. Gillies: I guess the point that has us a little concerned or confused is that the initial testimony you gave was that you did not think Mr. Douglas was present and that the presentation was made by Mr. Cannon.

Mr. Blakley: I was not sure.

Mr. Gillies: Which then became, "Mr. Cannon made the presentation but Mr. Douglas was in the room," and we now find that Mr. Douglas made the presentation and prepared the written memorandum for Mr. Cannon that went to the directors.

Mr. Blakley: Yes.

Mr. Gillies: So it is just a question of recollection that this is the case?

Mr. Blakley: Yes. It is a matter of presentation versus recommendation. The board was fully aware at all times that the recommendation of the investment would be the responsibility of the vice-president and the president, but the technical part of the presentation would be made by a technical person.

Mr. Epp: Could I ask a supplementary, Mr. Gillies? Would it not be that Mr. Douglas would be making the recommendation but Mr. Cannon would be supporting the recommendation?

Mr. Blakley: No. I guess in his presentation, he would have to be--he would not be making the presentation if he did not believe it was a good investment to make.

Mr. Epp: Mr. Douglas was recommending it and Mr. Cannon was supporting that recommendation. Is that right?

Mr. Blakley: He would have recommended it to Mr. Cannon and Mr. Cannon would have supported it after due diligence.

Mr. Epp: So in actual fact, Mr. Douglas was recommending it.

Mr. Gillies: Just one further question. Mr. Blakley, we now find that both Mr. Barnes and Mr. St. Amant from the ministry were conversant with this proposal and had an interest in it. You said there were some 30 or 40 investments made in 1986 by the IDEA Corp.

Mr. Blakley: Over a year and a half.

Mr. Gillies: Over a year and a half. How usual would it be for senior government officials to be as involved in the decision-making process as they apparently were in this one?

Mr. Ferraro: Barnes was a member of the board.

Mr. Gillies: Yes. He was also the assistant deputy minister of Industry, Trade and Technology.

Mr. Ferraro: But he was a member of the board.

Mr. Gillies: Mr. St. Amant and Mr. Barnes and other officials of the ministry. I recognize the board relationship--

Mr. Epp: These things would have gone to the board for approval.

Mr. Gillies: The earlier testimony, though, was that this was not just an approval situation. This was something these gentlemen had followed and had an interest in for quite a period of time. I just want to know--maybe that was very usual--

Mr. Blakley: To answer your question, it was most unusual.

Mr. Gillies: It was most unusual?

Mr. Blakley: Yes; for any investment that we made to have come from or to have had a part played in it by anybody from the ministry. This one was unusual in that, as Peter Barnes explained it to me--and we discussed it many times; he discussed it with Bill and others in a casual way--"We at the ministry get so many applications"--"supplications" is perhaps the better word--"from little guys out there developing software programs. As a result of this myriad of supplications from these people, we believe there is an awful lot of good software and software producers who are little guys in basements and attics who need help and the vehicle through which they can be helped might be created by IDEA Corp."

Mr. Philip: May I ask a supplementary?

Mr. Gillies: I will wrap up and then you can ask anything you want.

Would it be fair to say this application was unusual in two respects that I detect; one is the particular interest of the government officials, as you have just outlined, but also inasmuch as IDEA approached Graham rather than vice versa? Would it be fair to say that it was not common for your officials or yourself to go out and seek an investment; normally, they would come to you?

Mr. Blakley: That is right. Our people knew Graham. I think he had done some consulting work for us on some occasions on behalf of applications from software people looking for an opportunity to market their products. Here was Mr. Graham, who had had considerable experience in marketing software throughout the world in a previous company. After months of considering what we could do to help these software producers and having decided a marketing organization was needed, Graham obviously had to be one of the candidates.

Mr. Gillies: Mr. Chairman, I thought I was through, but now I hear something new.

Mr. Blakley: What is that?

Mr. Gillies: Mr. Graham had done consulting for the IDEA Corp.

Mr. Blakley: I think on a couple of occasions he was asked to pass judgement on a particular piece of software for us, so I was told.

Mr. Philip: Oh, my goodness; it is getting worse as we go along.

Mr. Gillies: Was this before or subsequent to--

Mr. Blakley: I do not think he was even paid.

Mr. Philip: Pity the poor taxpayers out there. If they are not depressed by this time, they will be now.

Mr. Blakley: He was not even paid for these things, as far as I know. He was asked to give his opinion on a piece of software.

Mr. Epp: Therefore, you felt you owed him something. Right?

Mr. Blakley: No. We asked a lot of other people for opinions on software too.

Mr. Douglas: It was subsequent to the investment.

Mr. Gillies: Okay. Let us nail this down. This was subsequent to the initial \$3 million investment being made?

Mr. Douglas: Yes.

Mr. Gillies: Mr. Graham was contacted by yourselves to offer an opinion on a consulting basis on various pieces of software?

Mr. Blakley: Not a paid consultancy.

Mr. Gillies: Not as a paid consultant but as a volunteer.

Mr. Blakley: As a guy we knew who was knowledgeable in the software business.

Mr. Gillies: Yes. Can you see the problem that might cause the committee again, inasmuch as you are developing sort of a "Can you help us with this?" type of relationship with a businessman who, in turn, is then coming to you for \$2 million more?

Mr. Maruzzo: I think there might have been phone call.

Mr. Blakley: I got this from Mr. Maruzzo and others that on occasion we would pick up a phone and say, "Hey, Terry, is this stuff any good?"

Mr. Maruzzo: I think we can go back and look at the reason for making the initial investment. As you have heard, one of the problems with software companies is that they lack the marketing and distribution expertise and distribution channels. After we invested in Graham Software, the idea was that with some of the companies we saw, and Micro-Master was one of them, that had a product but lacked the marketing ability, we would put them in touch with Mr. Graham or Graham Software.

I looked at a deal. There was an independent software developer who had developed a product in his basement and I said: "Fine. Great product, but how are you going to sell it?" He had no idea. So I called Mr. Graham and asked him if he would look at the product and let me know if he would consider distributing the product, when he would do that, whether the product was ready, whether he had seen competitive products, and I guess he went out and had a look at the product and got back to me a week later and said: "It is a nice product. It is too early for us. We are not interested at this stage." There was no fee there. That was the only time I used him, but the intention all along was that once Graham got off the ground, we would feed him companies or products or at least introduce companies that had developed products to Graham Software to see if there was a fit there.

Mr. Gillies: Let me put it to you this way. People come into my office in Brantford the odd time and ask if I can suggest a real estate agent to them or someone they should buy a car from, and I always say I think it is inappropriate that I do that; there are a number of reputable companies and they should check with the chamber of commerce or something. Do you think it is completely kosher for a government agency to have queries made to it from the private sector and for you to refer those inquiries to a company with which you are doing business? Are there not other competitors who might be getting cut off here?

Mr. Maruzzo: In the case of Graham Software, I was not aware of any other companies that were providing the same kind of service. Again, I guess that goes back to one of the problems with setting up a venture capital company. If that was a private venture capital company, there would be a natural synergy there. You have brought up one of the potential problem areas because it is funded by the public.

Mr. Gillies: I guess if it was the only one, it does not matter.

1650

Mr. Epp: Let me just go back to the way decisions were made. As I understand it, Mr. Douglas in this case would make a recommendation to Mr. Cannon on a particular project, in this case Graham Software.

Mr. Blakley: A proposal would be before us and a lot of people would be involved in it. Mr. Cannon or Mr. Logan would always assign a proposal, a request for an investment to one, two or three of his staff for them to go out and investigate it and get all the facts. At the end of a month or two or whatever--some of them dragged on--these individuals would come to the vice-president after having done their homework with due diligence and having collected the facts and opinions and say, "We do not want to touch this one." I guess nine out of 10 were no go, but "This one we think has a lot of potential."

Cannon, not being a technical person--that is, not a high-tech guy, any more than I am--would listen to the advice of his trusted employees and say: "Do you like this one? Why do you like it? Why do you think it is better than the one we just threw out last week?" They would have the occasion to say, "We like this one" and usually, if not always, on the basis of the technology.

Mr. Epp: When did you arrive on the scene?

Mr. Blakley: April 1985.

Mr. Epp: Were there many changes in the directors after you got there? Mr. Macdonald was there.

Mr. Blakley: There were three directors appointed a few days before the Liberal government took office.

Mr. Epp: And that was it?

Mr. Blakley: That was it.

Mr. Epp: They filled them all up with Tories.

Mr. Ferraro: Surprise.

Mr. Blakley: In fact, I do not think any of the three, as I recall, had any particular political colour.

Mr. Epp: Ultimately, it was the board that made the decision. Right? The recommendation went to the board?

Mr. Blakley: For?

Mr. Epp: For the \$3 million.

Mr. Blakley: Yes.

Mr. Epp: The board made the decision?

Mr. Blakley: That is right.

Mr. Epp: Then the \$2-million extension was made by Mr. Macdonald and the other board members?

Mr. Blakley: Yes; made by the board in the same fashion.

Mr. Epp: As far as the new government was concerned, there was a hands-off approach. They did not call up and say, "We want this. We want that," or anything of that nature?

Mr. Blakley: No.

Mr. Epp: As you said earlier, you prided yourself with IDEA Corp.'s independence from the government?

Mr. Blakley: That is right.

Mr. Epp: Tell me one other thing. With regard to the consultants, are there any more aspects of people in your employment working for the government who were employed by other--

Mr. Blakley: Investors?

Mr. Epp: --investors or other companies in which you were investing, in which you had an equity? How prevalent was this practice? It was not very prevalent.

Mr. Blakley: There was only a handful of people we had left--

Mr. Epp: When you got there?

Mr. Blakley: --at the end of June.

Mr. Chairman: Mr. Blakley, we cannot pick you up. You will have to move up a little bit and speak into the microphone.

Mr. Blakley: I am sorry.

We were told on February 19 that we had until June 30. By the end of June, most of the key people had left and had gotten assignments elsewhere. Mr. Maruzzo had a consulting assignment from the Ontario Development Corp. and I think two others had consulting assignments from ODC with respect to the investments. As far as I know, Bill Douglas is the only one who went to one of our investee companies; the only one I know of.

Mr. Epp: While they were working for IDEA Corp., were any others employed by either Graham or another corporation on a consulting basis? Mr. Cannon was. Aside from Mr. Douglas and Mr. Cannon?

Mr. Blakley: Consulting on the board but private consulting too?

Mr. Epp: Consulting.

Mr. Blakley: No, not to my knowledge.

Mr. Epp: Those are the only two? Mr. Douglas, are they the only two you are aware of?

Mr. Douglas: As far as I know, yes.

Mr. Epp: Mr. Maruzzo?

Mr. Maruzzo: Yes.

Mr. Epp: So there are only two cases and both cases are with Graham?

Mr. Blakley: Yes.

Mr. Epp: Okay. Thank you.

Mr. Chairman: I have one quick question before we go to Mr. Philip. We talked about the second instalment, if you will, the \$2 million that went to Graham. It was not on the agenda, and I recall someone saying that at the insistence of Mr. St. Amant it was put on the agenda.

Mr. Douglas: I would not say "the insistence."

Mr. Chairman: At his request then? Is that satisfactory?

Mr. Douglas: His assessment that the project was worth supporting further.

Mr. Chairman: As Mr. Blakley said, Mr. St. Amant was there to sort of be a link with the ministry and IDEA Corp. during the wind-down period and was not a board member. Where did he have the thump to get something placed on the agenda?

Mr. Blakley: He was designated--and I am not sure if it was official, but unofficially--as the gentleman who was going to be taking over what was to be called Innovation Ontario and likely was going to assume responsibility for, if not some of the existing, certainly some of the new investment prospects that were before us at that time, so he was in our view very much the guy in charge. He was there all the time and had offices in IDEA Corp. as the guy in charge of the follow-on, the transition. We presumed, therefore, that he was more than just an observer.

Mr. Chairman: Mr. Douglas, you did not approach Mr. St. Amant with any concerns about this not being on the board agenda for that particular meeting?

Mr. Douglas: Not being on the board agenda, no. As I mentioned earlier, it was not contemplated to be on that board of directors meeting agenda. It was pursuant to my telling him about the activity in the private sector trying to raise the \$7 million and the attractiveness of Mazdamon that he asked me what would the purchase price be, and I said probably \$2 million cash would buy it. He asked me if it was a good product, and I said yes. He said, "I think this is a good concept, and I think you should put together some facts and send them to the board belatedly and put it on the agenda."

Mr. Gillies: That arm's-length relationship is pretty short.

Mr. Chairman: We have one minute, Mr. Philip.

Mr. Philip: I have more than one minute's questions of Mr. Blakley, and it is on a different line.

Mr. Chairman, I would like to point out to you that in case someone has been viewing these hearings from 10 o'clock this morning until five o'clock this evening, he might feel quite depressed. On that assumption, and in the interest of the mental health of the viewers and of those people who are in the audience, I think I would like to announce some good news to you.

As you know, the public accounts committee held deliberations and an inquiry into the domed stadium in the fall of 1985 and part of 1986, thanks to the support for my motion for that inquiry, and the Provincial Auditor assisted us greatly in this. Carling-O'Keefe, which is located in the great riding of Etobicoke-Rexdale, is now a partner in the Stadium Corp. of Ontario. The committee might like to know that there are now 17 corporations that will be involved; thus a savings to the taxpayers of some \$35 million to \$40 million by the public accounts committee.

Mr. Chairman: That will be reflected in our new per diem.

Interjections.

Mr. Chairman: Let us have some order, please. Do we wish to have these witnesses return tomorrow? What is the wish of the committee? Have we completed?

Mr. Philip: No. I have some other questions for Mr. Blakley. I will take only five minutes with him.

Mr. Gillies: I think we would like to have these gentlemen available tomorrow if that is possible. There are two other names that have come up quite a bit today that I wonder if the committee--

Mr. Ferraro: Barnes and St. Amant.

Mr. Gillies: Perhaps Mr. Barnes, but I was thinking of Mr. St. Amant and Mr. Cannon. If those gentlemen are available--we have only tomorrow and Wednesday--I wonder if we should ask them for their presence.

Mr. Chairman: I think one of the things we are going to look at tomorrow in the steering committee is the schedule for the rest of the week and whether this process can be extended. That is one possibility we will be looking at.

Does that present a problem for any of the witnesses?

Mr. Blakley: It does for me. I was supposed to have done so many things today. I am in business for myself and this is a strain on my work load, although I am happy to be here to do whatever I can. If I have to be back, I would like it to be Wednesday, if possible, and not tomorrow.

Mr. Chairman: Is later in the week easier on the rest of you as well? Is Wednesday a satisfactory day?

Mr. Maruzzo: Wednesday is fine with me.

Mr. Douglas: Tomorrow or Wednesday is fine.

Mr. Chairman: All right, fine. We will discuss it in the steering committee. I think we can tentatively book Wednesday morning at 10 a.m. If it is anything different, we will give you a call.

Tomorrow we will start with Graham Software.

The committee adjourned at 5:01 p.m.

ADON
K21
-P73

P-62

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

TUESDAY, MARCH 24, 1987

Morning Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Barlow, W. W. (Cambridge PC)
Davis, W. C. (Scarborough Centre PC)
Epp, H. A. (Waterloo North L)
Philip, E. T. (Etobicoke NDP)
Pope, A. W. (Cochrane South PC)
Sargent, E. C. (Grey-Bruce L)
Smith, D. W. (Lambton L)
South, L. (Frontenac-Addington L)
Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South
Gregory, M. E. C. (Mississauga East PC) for Mr. Davis
Hennessy, M. (Fort William PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor
Mishchenko, N. J., Director, Special Assignments Branch

From Graham Software Corp.:

Wigdor, R. J., Legal Counsel and Secretary
Graham, T. D., President
Wawrew, K., Executive Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Tuesday, March 24, 1987

The committee met at 10:09 a.m. in room 151.

GRAHAM SOFTWARE CORP.
(continued)

Mr. Chairman: Come to order, please. We are going to begin the day with questioning by the committee of the representatives of Graham Software, Mr. Graham, Mr. Wigdor and Mr. Wawrew. Our first questioner is Mr. Gillies.

Mr. Gillies: I will start with a couple of questions asking you to respond to some of the charges that have been made about your company. The first that I will draw to your attention, and I am sure you are aware of it, is the affidavit filed by the Ontario Development Corp. in September 1986, that says, "We believe that continuing payment to shareholders at these rates"--referring to rates they considered to be excessive--"is totally unjustified and can only be explained as an attempt to fully consume all the resources available to the company." They are suggesting that your management practices and perhaps even your corporate structure were engineered to consume the government grant. How do you respond to that?

Mr. Wigdor: I wonder whether I can ask for a point of clarification. As counsel to the company, I thought I was aware of all legal process served. I am not aware of an affidavit filed in September.

Mr. Gillies: My information is that the affidavit was filed prior to the court process. Is that not correct?

Mr. Wigdor: The court process was commenced in January 1987. Is there a date on the affidavit?

Mr. Gillies: I am not looking at the affidavit itself, but my notes say that it was September 1986.

Mr. Wigdor: Before responding to the substance, perhaps we can clarify the specific issue. Court process was discussed between counsel and representatives of the principals in the fall of 1986. In so far as Graham Software Corp. is aware, there was no court process commenced in the fall of 1986. Rather, the terms of reference of the Laventhol and Horwath inquiry were amended to include a review of the conduct of certain of the representatives of the Ontario Development Corp. and the discussions concerning litigation at that time were abandoned while the review was conducted. I do not believe there was any process actually filed until January. If there was, notice has never been given to the company.

Mr. Gillies: Perhaps we can clarify this if the auditor has a copy of that affidavit.

Mr. Mishchenko: Our understanding is that the affidavit was prepared by ODC but was never filed.

Mr. Gillies: Pardon me; I stand corrected. It was prepared but not filed, but it does make up part of the evidence that we have before us.

Mr. Mishchenko: Yes, it does.

Mr. Gillies: That is the clarification, Mr. Wigdor. Regardless of the filing, this is something the ODC was prepared to say about your company and I wonder if you could respond on that basis.

Mr. Graham: When was that?

Mr. Gillies: September.

Mr. Graham: Could you read it again?

Mr. Gillies: The quote is, "We believe that continuing payment to shareholders at these rates is totally unjustified and can only be explained as an attempt to fully consume all the resources available to the company."

Mr. Graham: That is interesting, seeing as the shareholders were not getting paid and had not been paid for several months and the staff had been dramatically reduced. I think in October operationally it was break-even, so that is a very interesting comment. I do not know where it would come from. If that were repeated, and it might be repeated in the affidavit that was filed in court, I also find it very interesting from the point of view that we still had not been paid up to that point and had reduced the staff to approximately eight.

Mr. Wigdor: I would like to repond also, if I may, to the specific quotation, as it seems it is becoming a major issue in these proceedings. I would suggest first that the committee consider whether, if indeed the allegation is true, that it in any way excuses or mitigates the conduct by the representatives of the government of Ontario.

Second, if this committee feels that it does excuse the conduct that this government's representatives have engaged in, did they have a reasonable basis for believing the truth or veracity of the assertion made there? In other words, did they think it was true when they said it? I would point out that the affidavits filed in the proceedings were never subjected to cross-examination. I would also point out that Graham Software Corp. never filed any of its own materials in connection with the proceedings, other than a very bare affidavit by myself, to introduce certain documents to the Supreme Court of Ontario.

If indeed the committee concludes, first, that the alleged conduct, even if true, excuses the manner in which the Ontario Development Corp. has proceeded, and that there was a reasonable basis for having that belief--it was not just a figment of the imagination or a creation by government representatives--I would suggest that only then are allegations of this type germane.

I would submit also that in proceedings that we are not engaged in here--I recognize clearly that the committee is the master of its own procedure and can review or inquire into any aspect of the affairs in this matter that it choses. However, under the principles of justice that have evolved in this country it is customary, if allegations are being made, that the parties making the allegations make them in a fashion supported by

evidence with an opportunity to have those allegations tested in cross-examination.

We seem to be jumping to the defence here without having the case being made. That said, let us turn to the specific allegation about the compensation of executives. I asked the clerk to see that there would be available today the materials that were copied in my offices some weeks ago. Are they indeed here?

Interjection.

Mr. Wigdor: The affairs of Graham Software as a private corporation are regulated by corporate law and they are regulated by the shareholders and directors of the company. I would suggest that the salary levels enjoyed by the executives are a matter of concern to the shareholders of the company and are not to be tested against the wages of civil servants or any other standard that would be tested against what has been agreed to.

I would ask the clerk to make available to Mr. Gillies, and perhaps to other members, the volume of the materials that includes the agreement made between the IDEA Innovation Fund Inc., Graham Software Corp. and all of its shareholders in September 1985. It quite specifically addresses this point. It is specifically volume 7 of the materials that I filed and it is at tab 19. It is the share subscription agreement entered into by IDEA Innovation Fund Inc. and the other parties.

Having identified the agreement, I would have to make reference to it to find the specific page, Mr. Gillies, but it is in the schedules to the agreement at the back of that agreement, where full disclosure is made of material non-arm's-length contracts including contracts between Graham Software Corp. and its executives. On that page there will be a disclosure of the compensation levels to be enjoyed by at least Mr. Graham, Mr. Wawrew, Mr. Sonshine, myself and perhaps others.

Mr. Gillies: I do not want to put words in your mouth, but you are basically saying that you are really covered two ways. First of all, IDEA Corp. was a minority shareholder and if it had any concerns about compensation rates, then the IDEA representative on the board should have raised them.

Mr. Wigdor: I say, Mr. Gillies, that IDEA Innovation Fund Inc., the subsidiary of IDEA Corp., having agreed to those salary levels, should not subsequently be heard to complain in this forum or any other forum about having made an improvident agreement. If there was a view on the part of the new management, the new masters of IDEA, that the old masters had done something that should be changed, the board of directors or a shareholders meeting provided quite adequate forums to raise the issue, rather than raising it now or in filings with the Supreme Court of Ontario, having agreed in black and white in a firm, binding legal contract prepared by the largest law firm in Canada on their behalf.

Mr. Graham: It would have been redundant anyway, Mr. Gillies, because we were not taking salaries.

Mr. Gillies: All right. I heard yesterday that the salaries were not being drawn for a period of time. Have those salaries in fact been drawn to this date?

Mr. Graham: Yes, after we made an agreement with IDEA Corp. on their exit. At that point the only shareholders of the corporation are ourselves.

Mr. Gillies: All right, but the officers of the company have in fact been paid the salary and expenses that were due them as of today?

Mr. Graham: No, there are still outstanding payments to be made.

Mr. Gillies: There are still outstanding payments but they have been brought up more current than they were at some point in the past.

Mr. Graham: Precisely. You have to understand that it is a fairly difficult financial burden for a manager to go for six or seven months unpaid, as I am sure you would appreciate.

Mr. Gillies: No question.

1020

Mr. Graham: They are not paid in full to this date.

Mr. Gillies: I guess part of the problem is--Mr. Wigdor addressed this in part and it is something we as a committee are going to have wrestle with--of course it is not the IDEA regime that expressed concern about compensation rates and so on. It was raised as a concern by the Ontario Development Corp. and indeed has been spoken to as a concern by members of the committee. When did ODC first raise the matter with you and how did you respond?

Mr. Graham: I do not recall that they ever did. Oh no, that is not true. I can tell you when. When we were negotiating through the UCCEL deal, Brian Cass made some offhand comment about, "Oh, and these salaries are far too high." I guess that was in December. Prior to that, it would have been very difficult to protest the salaries, when they were not being taken.

One of the issues that has been stated is that one of the company's failings was excessive salaries to shareholders and so on. That has actually nothing to do with the corporation's financial trouble. To a man, the executives forewent those salaries and we even had an employee share purchase plan where employees sent cheques in to participate in the forward funding, and ODC prohibited us from doing that as well.

Mr. Gillies: ODC would not allow the employee share purchase? You alluded to that yesterday in your statement.

Mr. Graham: In the first directors' meeting we had, we had to make an amendment to the shareholders' structure to allow an employee participation program. They flatly refused to do that and we had to send the cheques back to the employees. They also announced in that meeting that there were no funds available. It was shocking because in the month prior to that, I had arranged for the company, at my own expense, to receive \$900,000 while waiting for this upcoming meeting to put together our forward funding. I was kind of disheartened by it.

Mr. Gillies: To speak specifically to the concern about compensation, expenses, etc., I find it interesting that ODC took over the portfolio in July. They were willing to commit their concern in this regard to an affidavit drafted, although not filed, in September. But you say that the

concern was never raised directly with representatives of the company until roughly December?

Mr. Graham: To the best of my knowledge, no.

Mr. Gillies: Is that your recollection also, gentlemen, that ODC did not raise this in September, October, November?

Mr. Wawrew: That is my recollection.

Mr. Wigdor: I think it was at the same meeting with Mr. Graham, as I recall, that Mr. Cutts also made a comment that there were those who were of the view that Mr. Graham had already been amply paid for his efforts in Graham Software. It was certainly in the context of the UCCEL transaction in the early winter of 1986-87.

Mr. Gillies: Getting to the central point then, Mr. Graham, you have managed or run other companies. You have considerable experience in this area. Do you feel that for a company in the type of work in which you were engaged, and the size of company that you were administering, the compensation packages for your executives were in fact appropriate?

Mr. Graham: Yes, I do.

Mr. Gillies: And that they would stack up well comparatively to other companies of a similar size in this area?

Mr. Graham: I surely do; there is no question about it.

Mr. Gillies: If we look at the testimony the committee was given yesterday in the three statements--ODC, yourselves and IDEA--the basic argument seems to be splitting along the following lines: You are saying that you had a good and workable arrangement with IDEA, that you had a good working relationship with the IDEA people and that at the time of the transition, when the portfolio moved to ODC, in effect you had the rug pulled out from underneath you, that you had a complete lack of co-operation and an unwillingness on the part of the ODC to see the company continue. The counter-argument from the ODC is that the company was maladministered and in financial difficulties, that the situation had been allowed to deteriorate under IDEA and that it had to move in and take over the portfolio to correct the situation. There is a very clear split in the evidence. Those are the two contentions.

With that background, I ask you to respond to the specific charge that in fact the IDEA Corp. did not administer your investment adequately, that there was maladministration on its part, because that does not jibe with your evidence that you were doing just fine with the IDEA people until big, bad ODC came in.

Mr. Graham: Where to begin? I guess one of the things I found somewhat surprising yesterday, and it was certainly news to me, was the fact that IDEA had been informed in October that it was not going to continue because that is certainly not what we were led to believe.

Mr. Philip: Will you speak a little closer to the microphone because we do not want to miss what you are saying?

Mr. Graham: One of the things I found an interesting piece of new

information yesterday was that IDEA was informed in October that it was going to be discontinued, which was certainly contradictory to everything we had been informed of. As I mentioned yesterday, we were told that initially IDEA was going to go through a name change, and secondarily, that it was going to be reduced in size and its location changed. The third circumstance we were told was that the portfolio was going to private sector. I found that news a little disheartening considering we were invited to participate with IDEA in September. With the ink barely dry, it appears that the government was already backing out of what was at least a three-year project in our initial projections. We had escalated those as secondary projections to sometime in 1987 as far as being profitable was concerned.

In direct response to your question, I thought the working relationship with IDEA was very good. I find it interesting that the conversation evolved yesterday to a topic that I am not sure is within the scope of what the committee was asking, but it seems to have made great hay in the newspapers regarding a potential conflict, which I do not believe existed. I think it was a mutuality of interest, not a conflict of interest.

If someone were to examine the document, he would find that a portion of the objective of the capital requirement was to retire a portion of IDEA's investment. That was clearly in IDEA's interest and clearly in our interest from a working capital point of view. When we got together to determine how we were going to go about the process of garnering these funds, retiring a portion of IDEA's and securing venture from, we were hoping, United States organizations, I sought counsel on the issue and was instructed that of course before any of this could be transacted, there would have to be approvals granted.

If I am not mistaken, the IDEA representatives who worked on the prospectus also sought legal counsel from Blake Cassels and were informed that permission had to be granted, and subsequently it was. As a matter of fact, I think you have a letter.

Mr. Wigdor: One of the two letters that I drafted--I drafted one to each of Mr. Cannon and Mr. Douglas in connection with the matter. The letter to Mr. Cannon I have noted is included in the supplementary materials provided by the Provincial Auditor if the committee would like to make reference to it.

Mr. Gillies: Let us go back to--sorry.

Mr. Graham: Perhaps I can finish. Perhaps you understand that one of the issues that I think perhaps mistakenly, perhaps not mistakenly, was yesterday's focus--and I am, I guess, very unaware of the conflict statement that you read to us yesterday. I am not sure whom it applies to or what section.

1030

Mr. Philip: We can go over that later and give you copies.

Mr. Graham: I do not know what it is, whether it is for a cabinet minister or for a government employee. I do not know that section, but--

Mr. Philip: It applied to the people we were asking questions of yesterday.

Mr. Graham: That may well be, but I think one of the things you have

to understand is that, if you have a venture group--it seemed that the focus of yesterday was more on procedure than on objective. The objective of the proposal was to garner working capital funds and to retire a portion of Innovation Development for Employment Advancement Corp.'s debt. The people most knowledgeable in the venture field and in the corporate operations were the people who worked on it, with legal counsel and with permission.

I do not understand that aspect very well and I do not know on your side, but from my point of view, it seems to me to be clearly a mutuality of interest. I say that typifies, in certain aspects, the type of understanding of (a) the industry and (b) the Graham operations, in a period when IDEA was very lightly staffed as well. To answer your question, yes, I think the working relationship was very good.

Mr. Gillies: I am not even going to question you about the conflict thing. Of all the parties involved in this situation, I do not think there is any question on anyone's part that, if there was a conflict, it was in any way your fault. I do not think it is a client company's responsibility to ensure that government officials with whom they are dealing are in or are not in a conflict-of-interest situation. If indeed there was a conflict, and I think there was, it was not your fault.

But I would like to ask you to go back to the very beginning of the investment. The testimony we had yesterday from Mr. Douglas was that, on his initiative, having to talk to some people in the field, he approached you initially about seeking IDEA investment for your venture.

Mr. Graham: That is correct.

Mr. Gillies: The other evidence before us was that was highly unusual. I believe Mr. Blakely said it was probably the only instance he could remember where they went out to a private company or a private individual and said, "Hey, you know, we want to invest in you."

I would like your recollection of that time. Had you discussed with anybody the possibility of seeking Ontario government funding for a venture, prior to Mr. Douglas contacting you?

Mr. Graham: No.

Mr. Gillies: So there had been no overtures or initiation from your end whatsoever?

Mr. Graham: No. Our focus at that time was working on the business plan and creating a structure that would be attractive for investment.

Mr. Gillies: After Mr. Douglas approached you, do you recall with whom you consulted, subsequent to the initial approach, as to whether you wanted to get involved with the IDEA Corp.?

Mr. Graham: Well, first, I do not think that you should frame the approach as an approach to invest in us. When Mr. Douglas came out to see me, he wanted to find out what our plans were. He wanted to talk about the software industry in general, how we viewed it and how we proposed to undertake our new business plan. So we discussed that issue and, at that point, he said, "Have you ever considered or would you consider IDEA Corp. as a potential investor in the enterprise?" To which I said, "No, I had not considered it, and no, I really didn't want to consider it."

You have to appreciate that the previous administration of IDEA was not held in enormously high regard within my industry. At that point, Mr. Douglas explained to me that there was a new president and that private sector executives had been hired on who had extensive experience in venture capital and in business. What I wanted to avoid by saying no, is almost exactly what I ended up getting when the Ontario Development Corp. took over.

Mr. Gillies: The bottom line is--

Mr. Chairman: We have have gone quite a bit over in your allocation.

Mr. Ferraro: Mr. Graham, I want to ask a question that was alluded to and dealt with to some degree already by Mr. Gillies and that is your assertion--if I can summarize--that if it was not for the big bad government and the ministry, that Graham would have functioned properly and indeed probably would have gone on in your estimation.

I want to present you with a couple of facts that I am sure you are aware of and then ask you to respond.

Mr. Graham: All right.

Mr. Ferraro: From my perspective as an individual and as a member, not only do I feel quite strongly that Mr. Nixon's actions in winding up IDEA were proper because, in my view, I think there was some serious lack of management expertise on the IDEA board to say the least, but the reality of the situation is here you have a company, Graham Software, which received \$5 million in the span of roughly a little over a year--less than a year actually. In September 1985, you got \$3 million and in March 1986 you got \$2 million. In less than a year you got \$5 million of government money and \$2 million of your own for a total of \$7 million, but I am looking at it strictly from the public purse. It was \$5 million in eight months--a new company.

You have a situation where when the ODC enters in July and I believe in mid-September asked for Sharwood & Co. to do a report on Graham Software, and I want to quote to you from the auditor's report on page 15, if anybody wants to follow. Sharwood & Co., Mr. Cutts I guess who did the investigation, with some difficulty at first--it was given to me too I suspect--but he quotes, "...the results to date emphasize that the company has lacked strategic planning and smart application of resources and money.' They recommend that 'further efforts to assist the company should be directed to an orderly windup'." I understand Sharwood & Co. have good expertise in this area.

They further indicate that, "Unaudited financial information as of October 23, 1986, indicated that Graham Software (Canada) had accounts payable of approximately \$728,000, of which over \$490,000 were more than 90 days overdue. Of this, \$317,000 was more than 120 days overdue," which indicates that as early as July 1986 you were in arrears. I bring back to mind the fact on March 7 you got a further \$2 million. Two months later, you are in an arrears situation.

Now surely, Mr. Graham, from our perspective, \$5 million in less than a year--you have an arm's-length company with expertise in appraising, I guess, and analysing company, come in and say that in essence this should be wound up. You have allegations and indeed the impression, to say the least, of conflict of interest and mismanagement and yet you say the government was wrong in doing what it did to you. Now could you respond to that?

Mr. Graham: Certainly. I guess my opening statement would be that your information is selected to make the point "why do we not fill in the blanks?"

Mr. Ferraro: Is it inaccurate?

Mr. Graham: No, it is selective. If I had meant inaccurate, I would have suggested that. Take a piece here and a piece there--

Mr. Ferraro: As was your presentation yesterday I suggest to you, but maybe you can--

Mr. Graham: Why do we not fill in the pieces?

Mr. Ferraro: Please do.

Mr. Graham: One, you said that you agreed with Mr. Nixon's idea or his concept to close down IDEA Corp., which I believe was in direct contradiction to Mr. Kruger's report. I have to disagree with that as did one of the most senior civil servants. Two, it sure would have been nice if Mr. Nixon had informed us as opposed to the position where we were continually being led to believe that everything was business as usual.

To go to the July issue of being in arrears, those accounts being due at that time and having receivables is not being in arrears. How would that be in arrears?

1040

Mr. Ferraro: The auditor is saying you are 120 days overdue and the report was filed on October 23. You go back--what, four months, three months?

Mr. Graham: Portions of those--

Mr. Ferraro: Let us say August. The facts show that you were in arrears as a company in August, having received \$2 million from the government in March. Did you not say the big bad government should never have stepped in, that we were wrong?

Mr. Graham: The \$2 million that was received in March was for an acquisition; \$1.75 million was paid directly to the acquisition and there were closing costs. I do not see that being a contribution to working capital. I see that as an asset purchase.

Mr. Ferraro: Surely, Mr. Graham, if the government is going to make a further investment of \$2 million, it is based, primarily, on the fact that it is towards that acquisition and that the \$3 million, and indeed your \$2 million, would all have had to fit into the plan to make it a viable entity.

Mr. Graham: The government was well aware as of February that, in the summer, there would be a capital requirement for working capital for Graham Software. It was well aware.

Mr. Ferraro: Then why the hell did you get the extra \$2 million in March?

Mr. Graham: I have just said it to you. It was for an acquisition of an asset, not for working capital.

Mr. Ferraro: Let me ask you, if I can, about what you have just said to us. You are saying that in February the government knew that you were going to have problems with cash flow. Yet, in March it gave an extra \$2 million, for the acquisition of an asset, I grant you.

Mr. Graham: Right.

Mr. Ferraro: Does that not clearly indicate incompetence on the part of the management of IDEA, to put a further \$2 million of taxpayers' money on the table knowing full well that you guys were going to have problems with cash flow?

Mr. Graham: No.

Mr. Ferraro: That is a good business investment?

Mr. Wigdor: I was a director of this company at this point--not of IDEA but of Graham Software--and I can tell you my perspective as a director of what transpired on this very specific issue.

The Mazdamon opportunity, because it was perceived as an opportunity in February 1986, was planned and was the subject of a business plan prepared and submitted to IDEA Corp., among others. It indicated that the capital requirement to acquire, launch, commercially exploit and bring to profitability the Mazdamon project was \$7 million. IDEA Corp., as you well know, provided \$2 million. There was a \$5-million shortfall.

The company was seeking to have that shortfall made up from private sector investors, principally in the United States, as you know now, with the assistance of Mr. Cannon and, to a limited extent, Mr. Douglas. Without that \$5 million, the company lacked the capital to launch Mazdamon. None the less, a conscious decision was taken by IDEA and Graham Software management, including its board, to proceed on the expectation that the capital shortfall would be made up.

The contingency funds from the \$5-million investment in September were used to support the market launch of Mazdamon. That is not what they were there for in the first place. They were contingency funds. The Mazdamon funding was not there. The company used its contingency funds. In retrospect, that was clearly wrong because the capital shortfall was never made up. At the time, a business judgement was made that those of concern and those who had responsibility thought was reasonable. Why, in your view, does that show maladministration or misjudgement on the part of IDEA?

Mr. Ferraro: It shows more than that. In my view, it shows incompetence, Mr. Wigdor, in my experience in the banking business. Can you explain to me, in your understanding, what guarantees IDEA had that you were going to accumulate and, indeed, have access to the additional \$5 million?

Mr. Wigdor: Perhaps it is exactly that approach to IDEA Corp. and its relationship with Graham Software that has led to these straits. There were no guarantees. IDEA was not a bank. It did not, as you suggested yesterday, loan money to Graham Software. It was a pre-venture capital firm, a higher-risk enterprise than a conventional venture capital firm because it invested in businesses before a venture capital firm would take the risk. There were no guarantees. There was no security.

Mr. Ferraro: On that I agree with you.

Mr. Wigdor: It put the money at risk.

Mr. Ferraro: You may have hit part and parcel of the whole reality of the situation, that IDEA was a bad idea. It was a nightmare, with no constraints and no controls; but I am getting off topic.

Mr. Graham: If I can turn to answer the remainder of your question regarding the Sharwood issue, keep in mind that, as the Ontario Development Corp. so proudly states, it immediately took charge in June.

Mr. Ferraro: July.

Mr. Graham: July, rather. It was over a month until we had a director's meeting, before our director was made available, and about two months till we met with Sharwood. It was very disheartening, to say the least.

Mr. Ferraro: You met with whom? I am sorry.

Mr. Graham: With Sharwood and Ken Cutts.

Mr. Ferraro: Apparently they wanted a meeting earlier, but you could not make it, so then you had a meeting with Mr. Winter to indicate why you would not let Mr. Cutts come in to talk to you. You could not get together. Is that correct?

Mr. Graham: No. I explained to Mr. Winter that we were working on forward financing. I had appointments, and Mr. Cutts was scheduled. I had no intention of cancelling appointments with venture groups and so on.

You have to understand that at this point our opinion was that we had been completely abandoned. When Mr. MacKinnon phoned me to insist that I go to see Sharwood, I said: "Fine, I will go and see him. I find it very interesting that now, after months, you are finally taking an interest in this," to which Mr. MacKinnon responded: "In my business, Terry, you cannot deal with anything until it is of a critical nature. You just do not have time." I said, "Fine." This was after calling Mr. Nixon, meeting with Mr. MacKinnon, meeting with the loans officer, getting sent to Willowdale, going to the Federal Business Development Bank and going back to Bob Winter.

When I met with Ken Cutts, I said, "Ken, can you explain to me what your mandate is?" He said that his was a merchant banking firm and it had been asked by ODC to raise capital on Graham's behalf. I said, "Ken, before we go much further, I would like a clear understanding of whether you are here as a paramedic or a mortician, because I have a little difficulty in believing what you have just described to me." He said: "Well, maybe there is more to this then. I do not know. All I know is that I have the file and I have a lot experience. Let us see what we can do." I said, "Fine."

We went over the situation at Graham. The first letter he sent to ODC outlined the various achievements we had and that there was a clear understanding that continued financing was part of the agreement. After two days of meetings, he said to me: "I do not see any reason why they would not fund us. The products are completed. It is not a development issue. They obviously have market acceptance. You have spent an enormous amount of money to open the distribution successfully. All you have is a cash flow problem."

I said, "I happen to agree with that, but I do not think that is quite the reception you are going to get." He said: "I will talk to Sharwood, and we

get some clarification on this. I will call you on Friday." He had called and said this was the letter he was sending down. It gave us a little bit of hope. We thought maybe this thing would work out all right. Then he phoned me on Friday and said: "No luck. We have talked to ODC and its position is that there is going to be absolutely no funding provided to Graham. The only avenue would be for outside financing."

At that point, Ken's comments were: "I do not think we have time to garner outside financing. In the event the time has run out, we do not have time to get outside financing. ODC has no intention of fulfilling its obligation." He suggested a windup.

Mr. Ferraro: What obligation?

Mr. Graham: Its obligation to continue IDEA's commitment for the program.

1050

Mr. Ferraro: I am not sure it had that obligation. Without knowing the facts of the involvement, the dealings of IDEA with its respective clients, I suggest to you its only obligation was to look into it, to do a study and then to determine the course of action.

Mr. Graham: Who?

Mr. Ferraro: ODC. Quite frankly, I think they took the right course of action. That is my opinion, and I appreciate yours.

Let me switch the question for a minute. Mr. Graham, why was it that in the 11th hour, ODC had to forward another \$41,000, which it got back, in order to facilitate the sale of Mazdamon for, I believe, US\$1,725,000? Why would you not come up with \$41,000 to facilitate that sale? I understand, it was 11:55 or thereabouts that same day, in the 11th hour, in which case it would have reverted back to the company that bought it back, for basically nothing. By putting up an additional \$41,000, we ended up getting over \$2 million or US\$1,725,000 for an asset.

Mr. Graham: You mean I ended up getting it.

Mr. Ferraro: You ended up getting it, yes, or the company. Let us face it, IDEA was a shareholder. The Ontario government was still a shareholder at that point. I am curious as to--

Mr. Graham: You do not mean I received the money. I am saying I ended up selling.

Mr. Ferraro: Well, Graham Software.

Mr. Graham: Why did I not put it up? At that point, I would say gun-shy would probably be a fairly accurate word, seeing as I had put in \$900,000 in June and the government, at this point, was obsessed with the idea of winding Graham down. We were in a wind-down scenario.

Mr. Ferraro: You were gun-shy about putting up \$41,000, which you were guaranteed to get back, in order to liquidate an asset which would have reaped US\$1,725,000. Your justification for not getting involved is that you were gun-shy?

Mr. Graham: No. Let me finish.

Mr. Wawrew: There was no established purchase price at that point or a potential buyer, so there were no guarantees.

Mr. Ferraro: But you wished to retain the rights to it?

Mr. Graham: Not only that--

Mr. Ferraro: But you obviously--

Mr. Graham: Let me finish the question.

Mr. Ferraro: All right.

Mr. Graham: I had put in \$900,000 in June. After the directors' meeting, we felt we were totally abandoned. With an impending windup, if I financed that and ODC was successful on the windup, the preference shares would take everything. Why would I put \$41,000 at risk? For what return?

The other issue is the offer that we ended up concluding was nonexistent at that time. Why would you do it? I will put the question back to you. Would you do that?

Mr. Ferraro: Why would the preference shares take everything?

Mr. Graham: Because they had priority.

Mr. Ferraro: If you had commitments to the bank which had certain stock--

Mr. Graham: What bank?

Mr. Ferraro: The Toronto-Dominion Bank.

Mr. Wigdor: There were no bank commitments.

Mr. Ferraro: Were not the funds disbursed, the \$1 million, to the Toronto-Dominion Bank?

Mr. Graham: You are jumping miles ahead. That is long after that scenario. That is after the sale.

Mr. Wigdor: Certain funds were lodged in escrow with the Toronto-Dominion Bank. There was never any bank debt. There was no priority that the bank would take in against any funds.

Mr. Ferraro: But there were commitments made to the Toronto-Dominion Bank subsequent--

Mr. Graham: Zero.

Mr. Wigdor: No, not to the Toronto-Dominion Bank.

Mr. Graham: None.

Mr. Wigdor: Where are you getting this?

Mr. Ferraro: It is my understanding, from the liquidation of the

sale--and I am jumping ahead to go into the place the thing was sold--that over \$1 million went to the Toronto-Dominion Bank.

Mr. Graham: To hold in the Graham Software Corp. bank account.

Mr. Ferraro: For dispersal to creditors.

Mr. Wigdor: No, sir.

Mr. Graham: No.

Mr. Wigdor: I administered that. Why do you not let me answer this, Terry? You are entirely misconstruing the arrangement that was put in place. The proceeds from the sale to UCCEL--do you want to pursue this track and understand what happened with the money, or is it a red herring? I will explain it to you if you want me to.

Mr. Ferraro: No. Tell me the truth. That is what we are here for.

Mr. Wigdor: Pursuant to the arrangements made between Graham Software and UCCEL Corp., the funds payable on the closing of the sale of Mazdamon rights were paid to me in trust. There is in the committee file a report on my administration of that trust that goes into fairly exhaustive detail of exactly what happened to every penny. There is, on the summary pages, my three-page reporting letter that will give you a reasonable overview.

The moneys went into my trust account which coincidentally happens to be with the Toronto-Dominion Bank. Once there, I paid, by direction, a number of creditors with whom arrangements had been made to have their claims paid directly out of the closing process, for example, the commissions payable to the Merchant Bank, which found UCCEL for us in the first place.

Then a sum of money was paid to Graham Software Corp., a sum in excess of \$1 million, that was immediately used to pay approximately 100 creditors.

Mr. Ferraro: Including yourselves.

Mr. Wigdor: No.

Mr. Ferraro: For back salaries?

Mr. Wigdor: No, that did not include back salaries. It was the so-called list of arm's-length creditors. I stand corrected; I think there was a 50 per cent disbursement of claims to certain managers out of those moneys.

Mr. Ferraro: Do you know how much that was in dollars?

Mr. Wigdor: Should it be 50 per cent of the claims? I do not know offhand. The exact amounts are in a detailed list that Mr. Budge, to whom Mr. MacKinnon referred yesterday, evolved in conjunction with the financial staff of Graham Software.

The second dispersal of those funds was directly to the company to pay creditors and a portion of the claims of managers. The remainder, pursuant to what has been called the standstill agreement, was deposited into the joint names of the ODC and Graham Software, supposedly for a 10-day period, although the way the arrangement was made it ended up being a 14-day period.

Before the termination of that standstill agreement, ODC commenced its

first court application. Having had that application adjourned, ODC then commenced a second court application, having persuaded the Toronto-Dominion Bank not to operate Graham Software's accounts. Having had that application adjourned, the Toronto-Dominion Bank realized the error of its ways and the money was released to Graham Software.

Mr. Ferraro: My conclusion, and I will wind up with this, if I may, is that, in my view, I still do not have--clarify it for me, if you can. Notwithstanding the fact that the disbursement of funds at that time was not determined, you admit and you indicated yesterday that in your view, Mazdamon was sold at a bargain basement price. In your view, it was worth well in excess of \$2 million. I still do not understand why you would not put up the \$41,000 to support that asset.

Mr. Graham: Let us try it again. I put in the investment. We had no support but if the sale garnered an access, if ODC was successful in a windup action, it would receive it.

Mr. Ferraro: Is it not a fact that if you did not come up to \$41,000 ODC and IDEA would lose the asset, Graham Software, which would revert to the people you bought it back from? Is that correct or not?

Mr. Graham: That it would revert back?

Mr. Ferraro: Yes.

Mr. Graham: Yes, it would.

Mr. Ferraro: So if you did not put up the \$41,000 you would lose that asset which, in your own estimation, was worth in excess of \$2 million. I guess what I am hearing is that you were sick and tired of the whole thing. Is that correct?

Mr. Graham: I was sick and tired of ODC's attitude, but I felt it was time we came to the mark.

Mr. Philip: If there is one thing that popped out in reading the documents, it is this issue. Maybe I am finding it difficult to understand. Walk me by it again, because you have not convinced me. For the sake of \$41,000 you sold off a major asset. I cannot help but wonder about the reasons you did that.

Surely, at that time, you understood that ODC was winding you down. You had had the meetings with them, and the writing was on the wall. Surely also, at that time, you would have had the same opinion that you later had that perhaps ODC legally could not make it stick, that because of some of the things ODC was doing, you could have taken legal action against ODC.

Having both those things in mind, why would you not at least say, "These guys are doing things that we can probably challenge in court," that you subsequently filed actions against? Why would you not at least say: "We will take the chance. We have invested all this money ourselves so far. We have time; we have energy. For the sake of another \$41,000, why not take a chance?" Chances are that the courts would decide at the very least you might get your \$41,000 back, or a larger portion of that \$2 million.

1100

Mr. Graham: When you are done, I will ask Mr. Wigdor to explain the

corporate structure, and perhaps you will see. Obviously, I am not doing an adequate job of explaining that.

The other thing you have to realize is that I had strong insistence throughout this period that ODC had a responsibility to continue the commitments of the government through IDEA, and it was not, under any circumstances. In the call from Brian Cass--and we talked about this issue as late as 11:30 on the night prior to the payment, and the payment would be made by 12 o'clock--I explained to him how I felt about its obligation. This had been months of disinformation, months of absolutely unbelievable ignoring and misunderstanding and fumbling of the entire event, and I wanted ODC to the line.

Mr. Philip: You wanted ODC to what?

Mr. Graham: I wanted them up to the line, "Get in the game, start fulfilling your obligations, let's go."

Mr. Philip: By going along with this deal, which to me, from an objective business point of view, would not make sense to you--

Mr. Graham: What makes you think I would not have cured it?

Mr. Philip: I did not say you did not care.

Mr. Graham: I said, "What makes you think I would not have cured it," through the default.

Mr. Philip: The fact you later planned legal action against ODC must have made you feel you had some chance of at least--

Mr. Graham: We did not plan legal action against ODC; ODC planned legal action against us. They took us to court. Your understanding of this is, I suppose, why we are having a meeting. I should not be upset at that; it is an opportunity to inform you.

Mr. Wigdor: Perhaps I could try to defuse this a bit by explaining what I think Mr. Graham is taking for granted on your part in understanding the pressures that were created.

First, you have indicated that you understand Mr. Graham or Graham Software commenced legal action against ODC. That is not true. Neither Mr. Graham nor Graham Software Corp. nor, I believe, any shareholder of Graham SSC has commenced any proceedings against the government of Ontario or ODC or IDEA or anyone at this point. Perhaps I misunderstood what you meant, but I thought you indicated Mr. Graham had commenced actions.

Under the terms of the original acquisition of Mazdamon, the software product was pledged back. There was a mortgage on it for first charge. The default in the payment of money, the \$41,000, had a specific time to be cured. That is what Mr. Graham meant by "cure" when you thought he said "care." If the money got paid by a deadline, everything was back on an even keel again and we would move on. If it was not paid by the deadline, the original vendor could realize on its security. That deadline had already been extended, and this critical evening you have been discussing was the last evening of the extended period.

Knowing the way Mr. Graham puts things sometimes, I am not sure he

conveyed to you adequately what he was trying to do. He was trying to pressure ODC into making a further financial commitment to Graham. He felt and still feels ODC had taken on certain obligations to Graham in this regard. He also suggested to you when he asked, "What makes you think I would not have cured it?" that he was bringing the matter down to the wire. But you are assuming that had ODC not written that cheque, Mr. Graham would not have. I do not want to put words in your mouth, but what I heard you indicate was, what makes Mr. Philip believe you would not have written that cheque if ODC had not?

Mr. Graham: I never said at all that I would never write that cheque.

Mr. Philip: So you would have written the cheque, then, if ODC had not?

Mr. Graham: I did not have to face that decision.

Mr. Philip: It makes me wonder why somebody such as yourself who has gone through this kind of risk venture capital suddenly becomes gun-shy in the last minute.

Mr. Graham: There is nothing to indicate that I would not have paid that. What I am saying to you is let us deal with the reality. The reality is that I did not have to make that decision.

Mr. Philip: Is the reality that in paying it or in going along with this deal in which ODC pays it, you thought you would somehow buy time and pacify ODC? Was that your objective?

Mr. Graham: Buy time and pacify ODC, no. My objective in that transaction was to get the default cured, which it was.

Mr. Philip: Let me go through a couple of other matters that are of interest since you pleaded lack of understanding of why members of the committee might be concerned about conflict of interest yesterday. On January 2, Mr. Connor wrote to Mr. Blakely. This was the document that Mr. Blakely seemed to have an absence of memory about yesterday, in which he said he did not remember that Mr. Connor--

Mr. Graham: Who is Mr. Connor?

Mr. Philip: Mr. Cannon, I should say; Geoff Cannon wrote to Mr. Blakely. Yesterday, he did not remember. Can you tell us, in each instance, Mr. Cannon and Mr. Douglas, who approached whom for the arrangement with Graham Software that these people received fees?

Mr. Graham: Who approached whom? I do not think it is that kind of a forum. I think the forum would be more properly framed that, in a business discussion, various conclusions were drawn and the capital requirements were established. The next step was, how do we proceed with this? I have illustrated to you that we felt it was very important that we were going to work in co-operation on this project, that we ensured everything was aboveboard, that counsel had been advised and that the documentation was properly in place to support any of those activities. That is exactly what happened.

In reference to your previous reading of those conflict regulations, ideas and so on, I had no idea of those and I still to this point have no idea of how they apply. All I knew was, from my point of view--and I know their

concern was--that everything was aboveboard and properly documented and that counsel was approached and it was. How much further can you go?

Mr. Philip: As an employee, you can have the responsibility. As an employee for the crown in any capacity, you can have knowledge and follow the major directives of that company, particularly when it comes to conflict of interest.

Mr. Graham: This was the point I was making before, though. You are focusing on policy and on procedure. You are not focusing on objective. I do not believe for a second that any of those participants had anything in mind but fulfilling the objective. The objective was to get our working capital financing and to retire a portion of IDEA's investment at a profit.

1110

Mr. Philip: Sir, maybe we are not talking about your objective, but the objective of the conflict of interest is to protect the taxpayers from being ripped off by people who have had conflicts, and that is a legitimate objective.

Mr. Graham: All I am saying is I was not an employee of the crown. I know every precaution was taken to ensure this arrangement was known and counsel was advised. From that point, there is nothing more I can add to that.

Mr. Philip: The memo of January 2 suggests that, "Terry Graham, president of Graham Software Corp., has asked and I have agreed to provide certain consulting services to Graham Software." That suggests you initiated the action. Did you approach Geoff Cannon or did he approach you and say, "I can provide certain consulting services"?

Mr. Graham: I am going to repeat what I said. As to my recollection of who initiated the request, I do not know. Obviously, the letter is worded that way because the corporation is requesting his services, but if you are talking about the physical conversation, I do not know. I know we had several business conversations, the focus of which was working capital and the retiring of part of the IDEA debt. The initiation of it I do not know.

Mr. Philip: I have some background in business too, and it seems to me that if it were the corporation that had made the offer, it would be in different words. It would say, "I am considering accepting a request from Graham Software Corp." This is fairly clear. It says you asked him. It is a much more informal communication.

Mr. Graham: I am not avoiding the point of the questioning. What I have just provided for you is my recollection. There is not much more I can add to that.

Mr. Philip: Can you give us, just for the record, exactly how much money was involved in your payments to both Mr. Cannon and Mr. Douglas?

Mr. Graham: I do not have it with me but I can certainly get it.

Mr. Philip: Can you give us a ball-park figure? Do you have some idea of how much you offered them?

Mr. Graham: It seems quite important. I think I would rather get the actual amount.

Mr. Philip: If you were a company competing with yourself, would it not strike you as somewhat unfair if your competitor managed to hire or provide moneys to, or give a job or certain other contracts to, the very people who were making decisions concerning whether you were going to get what amounted to public funds?

Mr. Graham: Well, it is an interesting question.

Mr. Philip: Supposing there is another company competing with you, making a similar application, would you not be very suspicious of a company that suddenly goes to the judge and hires the judge? That essentially is what happened, is it not? We had testimony yesterday from Mr. Blakley that Mr. Cannon made the proposal of that extra \$2 million and that the documents, the technical papers were prepared by Mr. Douglas. Now, these are the very two people you are paying as well, at the same time. Now, you do not have to read conflict-of-interest guidelines to know that really does not look very good, does it?

Mr. Graham: I do not think it looks very bad. If you think of the practicality of business, your appreciation for public funds and dispersal of them and so on, are shared by myself. You have to understand that this organization was set up to mirror a venture capital group. If you were working in co-operation with a venture capital group in a not dissimilar manner, there would be no whatsoever. How can it be represented to us as a venture capital group on Monday and on Tuesday be made to sound like a ministry handing out grants? These are not grants; they are equity investments. Would you work in that close co-operation with your venture capitalist? I suggest you would.

Mr. Philip: Whether it is venture capital or not, someone still has to make the decision, the very people who were making the recommendations on the decision. There comes a point, even in venture capital, when you say, "This is too much of a risk."

Mr. Graham: Let me answer your issues. You are the venture capital group and I am Graham Software. The people who have the most intimate knowledge of the organization, the industry and the venture arena are the two people in question..

I go to you as the president of the venture capital group and say: "The project we would like to work on is to retire \$2 million of your investment profit and to provide \$5 million of working capital. We are understaffed. We cannot get the time on a normal basis. Do you have any objection if they work on their own time and I hire them to work on this project to put the proposal together?" You would say "yes." You would say: "It would be cost-effective. It is intelligent and it is protecting my investment. My fellows are on the case, working in co-operation for my benefit and the benefit of my investment."

Mr. Philip: Let me suggest this to you: If I were the venture capitalist, I would not want the person making those technical decisions and recommendations to have any interest in the company he was recommending I put my money into.

Mr. Graham: In many cases, the venture capitalist would have an interest.

Mr. Philip: You try to pass it off as something that happens in business, but you are also fairly politically sophisticated, sir.

Mr. Graham: It does happen in business.

Mr. Philip: You are not a political neophyte. You know we are dealing with public taxpayers' money. To come here and try to convince this committee that somehow you are this poor venture businessman who knows nothing about the political realities and nothing about the obligation of a government to protect the public purse--

Mr. Graham: Keep in mind my original rejection of the participation. Only after assurances that it was an independent group that had its own financing in place and that it would be conducted along the lines of a traditional venture group, without political and government bureaucracy administration, did we accept to enter into the arrangement. You cannot say that on one day and then come back and say I am feigning ignorance. It was for those very reasons and that lack of ignorance that I said "no," and it was only after the assurances that this would not happen that I said "yes." And here we sit.

Mr. Philip: Sir, with great respect, I find that somebody with your political experience would understand that working with public funds, be they venture funds or not, you at least have to abide by conflict-of-interest guidelines and certain other guidelines that protect the public purse. Your pleading that it is somehow different, quite frankly, lacks--

Mr. Graham: Number one, I would like to know what is this rich political background I have, because I do not know.

Mr. Philip: I am sorry. Can you let me finish, at least? I am elected and I do have a right to ask a question.

Mr. Graham: I agree.

Mr. Philip: Quite frankly, that lacks credibility with me. I leave it at that.

Mr. Graham: Fine.

Mr. Epp: Mr. Graham, you indicated yesterday in your remarks that in January 1985, you had a projection of making somewhere in the neighbourhood of \$20 million.

Mr. Graham: No.

Mr. Epp: Did you not indicate that in your remarks yesterday?

Mr. Graham: No.

Mr. Epp: What was your projection then for 1985 as far as the optimism in your company was concerned?

Mr. Graham: It was \$1.4 million.

Mr. Epp: When was that, January and February?

Mr. Graham: For 1985?

Mr. Epp: Yes..

Mr. Graham: Nothing.

Mr. Epp: Nothing in 1985. What about 1986?

Mr. Graham: In revenue?

Mr. Epp: Yes.

Mr. Graham: It was \$1.4 million.

1120

Mr. Epp: That is what you were projecting.

Mr. Graham: That is correct.

Mr. Epp: For the total year?

Mr. Graham: Yes.

Mr. Epp: How much did you have in assets in March 1986?

Mr. Graham: I do not know. I did not bring the financial statements with me. I can certainly get that information for you. Assets as of March?

Mr. Epp: I beg your pardon?

Mr. Graham: Assets as of March 1986.

Mr. Epp: On March 10, you got an extra \$2 million from the--

Mr. Graham: March 7.

Mr. Epp: March 7, an extra \$2 million from IDEA Corp.?

Mr. Graham: Yes.

Mr. Epp: What happened to that money from March until June?

Mr. Graham: We purchased Mazdamon.

Mr. Wigdor: For most of that period that money was in my hands.

Mr. Graham: That is right, because (inaudible). It was in escrow.

Mr. Epp: Okay. What happened to the money during that time? You indicated yesterday in your remarks that things went downhill during that time. It was not very long afterwards when the Ontario Development Corp. came in and there was no money left.

Mr. Wigdor: Since I had the money, perhaps I could answer that question, Mr. Epp.

Mr. Epp: Yes, maybe you can answer it.

Mr. Wigdor: The transaction we are discussing had the \$2 million paid to me in trust and I held the funds as escrow agent together with the shares being purchased with those funds, also in escrow. The terms and conditions of that escrow related to the acquisition of Mazdamon. The moneys were invested in interest-bearing deposits with a Canadian chartered bank for approximately nine weeks, rolled over first on a weekly basis, and then as the Mazdamon transaction approached consummation, on a daily basis. If anything turns on the point, there is a complete report in the committee's files of my administration of those funds.

Upon the completion of the acquisition of Mazdamon, \$1.75 million were paid directly out of the escrow to the vendor. The balance of the funds were released to Graham Software Corp. The \$250,000 residue after certain related closing costs went into the general funds of Graham Software in approximately the third week of May 1986. I would have to look at the documents for the exact date. What happened to them after that point, I return you to Mr. Graham for completion of the answer.

Mr. Epp: Okay, what happened after that?

Mr. Graham: To the remaining \$250,000?

Mr. Epp: Yes.

Mr. Graham: We paid legal, accounting fees, etc., for the acquisition.

Mr. Epp: Legal fees and accounting fees?

Mr. Graham: Closing costs.

Mr. Epp: Closing costs for what?

Mr. Graham: For the acquisition.

Mr. Epp: Yes. Okay, that might be \$5,000 or \$10,000. What happened to the other \$240,000?

Mr. Graham: I do not think it would be \$5,000 or \$10,000.

Mr. Epp: How much would your legal adviser take for transacting a job of which he was a member of the company or legal adviser?

Mr. Graham: There was more than one counsel involved.

Mr. Epp: How many counsels were involved?

Mr. Wigdor: Four.

Mr. Epp: Who were they?

Mr. Wigdor: Myself, Ridout and Maybee, which is one of Canada's leading intellectual property law firms associated with Lang, Michener and Lash, Johnston in Toronto that acted in connection with investigations of title of the intellectual property rights in the Mazdamon product. Actually,

in conjunction with their assistance, Lang, Michener and Lash, Johnston also provided certain assistance.

The purchaser of the transaction was the Graham Software Antilles purchaser and the Antilles law firm that represented that company participated in providing certain opinions and legal evidences of the authority of the Antilles company to complete the purchase.

Loyens and Volkmaär, which is the Amsterdam firm that provided the legal advice in connection with the structuring of Graham Software's affairs internationally, was involved.

In addition, Price Waterhouse, the company's auditors, was involved in Toronto, the United States and Europe. They were not legal counsel; they were accounting and tax counsel.

Mr. Epp: Is this typical, where you have up to four law firms involved in a deal which involves \$1.75 million?

Mr. Graham: No, \$3.2 million. This is one of the things that keeps being misconstrued. Mazdamon was purchased for \$3.25 million, not \$1.75 million.

Mr. Epp: Is this typical, to have four law firms plus your local in-house lawyer involved?

Mr. Graham: I think there were more involved when we sold it to UCCEL. Because of the international structure of the corporation, yes, it is normal. I would also say it is prudent. I think you would find a similar acquisition team had been compiled by the UCCEL organization when it acquired the product. You are dealing with international law, intellectual property rights and the tax treatment of the acquisition. I think it would be irresponsible not to have people who had expertise in those areas.

Mr. Epp: How much were your legal fees for that?

Mr. Graham: I do not know. I am going to have to get that for you.

Mr. Epp: You have no idea? You had a business transaction of \$3.25 million and you do not know approximately what your legal fees were?

Mr. Graham: No. I have not isolated those out, calculated them specific to that deal, but I can.

Mr. Epp: You do not know if it was \$25,000, \$10,000 or \$100,000?

Mr. Graham: It certainly would not be \$10,000. I do not know exactly. I can certainly garner the information--

Mr. Epp: I am not asking you exactly; I am asking you approximately.

Mr. Graham: That is a very difficult question to answer. I do not know approximately.

Mr. Epp: Maybe you can get it for us.

Mr. Graham: Absolutely, I can. That is no problem.

Mr. Epp: What did you obtain when you obtained Mazdamon?

Mr. Graham: A-software product.

Mr. Epp: Such as?

Mr. Graham: What it does?

Mr. Epp: Yes. What does it do, what was it?

Mr. Graham: It monitors large-scale networks.

Mr. Epp: What kind of large-scale networks?

Mr. Graham: I will give you an example. Let us say you were Imperial Oil, and you had a communications network spread out across the country, around the world, whatever. One of the critical issues in managing the network properly is response time and historic information. For example, if you have 25 terminals in Saskatchewan, and you are not getting adequate response, productivity drops dramatically, because, as you key in the information, if the time for the information to respond to your request lags significantly, you are losing productivity.

What Mazdamon does is monitor the network, red-flag any problems in the network and provide a historic log so that you can do trouble-shooting on the network, make adequate repairs, or see buildups occurring so that you can establish more lines and more network capability. It is a magnificent product.

Mr. Epp: How many of these units did you get, or what did you get when you bought Mazdamon?

Mr. Graham: The tape, the source--

Mr. Epp: Just the tape?

Mr. Wigdor: In a technical legal sense, that is the type of answer you are requesting. We got much more than that.

Mr. Epp: I want to know what the taxpayers got for their money.

Mr. Wigdor: We acquired legal title and the copyright and all the intellectual property rights associated with the Mazdamon product, together with the copyright and the documentation relating to it, peripheral property such as a tape containing the source data, trials in progress, the customer base. Understand, this was not a brand new product; there was an installed base and several million dollars of customers. We acquired an assignment of the maintenance agreements and the right to receive revenues from those maintenance agreements indefinitely.

We acquired an assignment of the end-user licence agreements with each end-user purchaser. I believe we acquired an assignment of two agency arrangements that the vendor had not placed for sales outside Canada. We acquired the services of a development team on a fee-for-service basis, but with a credit--I do not recall the exact amount--of several weeks of the primary author's services without charge, to continue his enhancement, development and support of the product. We acquired an assignment of a Canadian trademark in the name Mazdamon and an assignment of worldwide rights to the Mazdamon trademark.

I am not sure that is an exhaustive list, but those are certainly the most important elements of the legal transfer of property rights. In a quick lay summary, I could say we acquired ownership of the product.

1130

Mr. Epp: Did you get any hardware with that, aside from the tape and the rights?

Mr. Graham: No. It has nothing to do with hardware.

Mr. Epp: The people you were servicing would have to have their own hardware in order to use it.

Mr. Graham: That is right. You would envisage the largest corporations in the world using the product, with large data centres and with IBM's largest machines and networks of 200 or more terminal devices.

Mr. Epp: You would provide the tape to them.

Mr. Graham: That is correct.

Mr. Epp: You had the rights to that tape.

Mr. Graham: That is correct.

Mr. Epp: The Canadian rights.

Mr. Graham: The international rights. The products are sold in England, Germany, Australia, New Zealand, the United States and Canada.

Mr. Epp: Where did the word "Mazdamon" come from?

Mr. Graham: That was the name of the product selected by the author.

Mr. Epp: Does it have any significance to the function it performed?

Mr. Graham: No.

Mr. Epp: He just picked the name out of a hat.

Mr. Graham: Chrysler LeBaron, K car; I do not know where you get Mazdamon from.

Mr. Wigdor: I had an explanation once. The "mon" part of the word was short for "monitor." Mazda was an Indian god related to something personal to the author. I do not recall the entire story, but it was certainly personal to the primary author of the product. His Canadian corporation, for example, was called Mazda Computer Corp.

Mr. Epp: I understand you paid \$3.25 million for Mazdamon and \$1.75 million of that was paid by--

Mr. Graham: Was cash.

Mr. Epp: Which was from the \$2 million you got from IDEA.

Mr. Graham: That is correct.

Mr. Epp: In other words, there was another \$1.5 million.

Mr. Graham: In the note.

Mr. Wigdor: There was also a 10-year residual royalty on top of that.

Mr. Epp: As far as the purchase was concerned, all the money came from IDEA. None of your own money or anyone else's money went into that. There was no private money initially when the purchase was made. It was all public money.

Mr. Graham: Figure it out for yourself. If you figure it out, IDEA bought shares in the corporation, and one of the uses of the capital that was garnered from the sale of the shares was that.

Mr. Epp: They had a minority shareholder though. I guess what I am saying is that after all the transactions, after \$4.8 million of public money was squandered, the only thing we have to show is that you bought Mazdamon for \$3.25 million. The total that was paid initially was \$1.75 million, which came out of public money. The legal fees and the accounting fees for Price Waterhouse and the four law firms, plus Mr. Wigdor, came out of the \$250,000. You have no recollection of whether it was more than \$10,000. That is correct, but you do not know whether it was under \$250,000. You were not able to tell me approximately how much it was. Then what did the company sell for when it was eventually sold?

Mr. Graham: The product?

Mr. Epp: Mazdamon. What was it sold for?

Mr. Graham: There are two questions. The first question was what else is there to show for and what else was done. I will address that one.

Mr. Epp: Address that as well, then.

Mr. Graham: I said I would address that one after. Robin, you might as well go through the acquisition pricing of the sale.

Mr. Wigdor: The sale to UCCEL was not at a loss, it was at a substantial profit. I think you are inferring from numbers to this point there was a loss.

Mr. Epp: Okay, what was the profit?

Mr. Wigdor: UCCEL assumed the obligation to pay the note to the original offer. It assumed the debt

Mr. Epp: It assumed \$1.5 million?

Mr. Wigdor: At that time I think it was \$1.42 million. They assumed the entire royalty obligation to the offer. They paid US\$1,725,000 to Graham Software, plus they paid a debt on behalf of Graham Software of US\$100,000 for a subtotal of US\$1,825,000, plus they agreed to pay to Graham Software a proportion of the gross revenue ultimately received from end users that acquired a right to use Mazdamon that had prior to the completion of the sale a trial use of Mazdamon for evaluation purposes. It is that residual in particular, a portion of which has been assigned to the Ontario government as part of the settlement.

Graham paid cash, CAN\$1,750,000 in royalty and some debt. UCCEL paid US\$1,825,000 cash, assumed the debt, assumed the royalty and in addition agreed to pay certain residuals to Graham. So the profit is the difference between US\$1,825,000, plus the residual which was of an indeterminate amount--it runs for an eight-month period--less CAN\$1,750,000. Depending upon the valuation of that residual the profit may be viewed as being as much as \$1 million.

Mr. Epp: Mr. Ferraro has a supplementary, but for Canadian dollars you could add another 25 per cent at that time to this money so you got over \$2 million left over.

Mr. Ferraro: My supplementary is this. When you sold it for a profit, it was a definite asset to say the least. Getting back to the fact that you did not want to put in \$41,000 at that juncture, and you say you wanted to get ODC involved, which is playing poker and I understand that business. My question is very simple. Did you or any representative of Graham Software ever negotiate with any other entity the acquisition of the Mazdamon computer, whatever it was in any shape or form, assuming the government, if I may, did not cure it before the time ran out?

Mr. Graham: I certainly cannot answer for any and all employees but I can answer for myself. The answer is no, I did not.

Mr. Ferraro: To your knowledge no one in your employ ever negotiated to pick up the assets of Mazdamon which were substantial?

Mr. Graham: That is correct.

Mr. Ferraro: Failing the government or ODC getting involved?

Mr. Graham: That is correct.

Mr. Philip: Just run this by me again because I may have missed it. Did you at any time discuss with IDEA Corp. as to who might pick up that \$41,000?

Mr. Graham: You mean ODC?

Mr. Philip: With ODC. You said there was no guarantee that if ODC had not paid it that you might not have picked it up. Were there discussions between you and ODC? Using your own words, at the midnight hour it is 11:59 and 59 seconds and you have a desperate situation on your hands. Did you have discussions with ODC? One interpretation that one might pick up would be that when you did not pick it up then, ODC said, "Oh, my goodness we have a real problem, we had better do it." They moved in. Did you have discussions with ODC?

1140

Mr. Graham: Several. The two-week extension to the default was negotiated by myself. The other aspect that was negotiated by myself was in the event that the default was not cured, the product would revert for nothing to the author.

When we had negotiated, there was a buy-back clause in the initial purchase arrangement and what it anticipated is that at some time in the future, we felt from a marketing point of view we wanted to discontinue

selling the product, yet the author felt there was still merit in selling it, but there would be a provision that he would be allowed to buy it back on a first-refusal basis and at predetermined amounts. In fact he had no obligation.

Mr. Chairman: Let us move on. You have had--

Mr. Epp: Mr. Chairman, you said I had a minute, but I permitted two supplementary questions--

Mr. Chairman: The agreement was he was using up your minute. I will let you go with one more question.

Mr. Philip: I did not understand. Why not let him have the question?

Mr. Chairman: Go ahead.

Mr. Epp: I guess what I see now, when did this sale take place, Mazdamon?

Mr. Wigdor: January 15, 1987.

Mr. Epp: What happened to that money? You had over \$2 million in Canadian money. What happened to the money?

Mr. Graham: There is a list of dispersements under direction from creditors; part of the residual and the company paid for the repurchase of shares.

Mr. Epp: Repurchase of shares?

Mr. Chairman: Do you want to comment, Mr. Wigdor?

Mr. Wigdor: I thought I had made this clear. Obviously I have not. I am just looking through the Provincial Auditor's report and I know I saw in it the summary of my report of what happened to the money in so far as it was in my trust account. That does not show in detail the amounts paid to each creditor, but I think that information is also on file in this room. Perhaps someone from the Provincial Auditor's office could help me find the specific tab number of this document.

Mr. Archer: Tab 24.

Mr. Wigdor: Thank you. It is tab 24. Perhaps the clerk could provide me with a copy of the book that has tab 24 and I can answer Mr. Epp's question precisely and accurately.

Mr. Chairman: Mr. Smith, could you lend Mr. Wigdor your black binder?

Mr. Wigdor: Mr. Epp, I am going to refer to tab 24 in the black binder. I am not going to put you through the agony of reading a lawyer's reporting letter, but let me start the answer to your question with tab 24.

As I indicated in the first sentence, a separate report of the legal transaction was prepared in a book under separate cover. This was simply a report of what happened to the money. As I said before, the closing funds were paid to me by bank draft in trust and that bank draft was deposited in my trust account, US\$1,725,000. Because it was a draft drawn on a US bank, my bank did not give value until January 19, the Monday following the closing,

and because the closing was in Chicago, the draft was not tendered until Friday, January 16. I did not return to Toronto until after the bank was closed. That closing was not completed until about seven in the evening.

On Monday, January 19, where was that money? I had dispersed out of the US-dollar funds from my US-dollar trust account the two payments noted under the heading "Paid in US dollars." The authority to do that is annexed in my report book at tabs 6 and 7. I then converted the balance into Canadian dollars and dispersed the list of payments under the heading "Paid in Canadian dollars." The authority for me to do so is annexed at tabs 8 through 14 of my report book. Then I provided a summary of the effect of those transactions, noting that the balance left after making those payments was about \$1,759,000. I paid certain moneys that were due to me and show reported in the next paragraph, and I withheld certain moneys to pay my own account and those of the four firms noted at the top of the third page in connection with the transaction.

The approximate amount of the fees payable to the five firms had been discussed in advance with representatives of the ODC, and I had estimated them at \$125,000. I withheld an extra \$10,000 to allow for variations from estimate. I would point out that I had assumed personal liability to each of these four firms in connection with the transaction because Graham Software Corp. was not in the position to secure their fees and disbursements.

Then, after noting the status of that reserve, I dispersed \$1,022,000 to Graham Software Corp. out of the \$1,607,000 balance. That is paragraph (a) on the third page. There is a complete list of the recipients from Graham Software of those moneys. They were approved in advance by the ODC. As I said, I believe materials already filed with this committee will show to the penny where the money went. The balance in paragraph (b) went into the escrow, under what I have referred to as the standstill agreement, and became the subject of the litigation.

I believe I have answered your question about what happened to the money through to the point it left my trust account. What happened to the \$1,022,000 is answered by examining the list of creditors who received it. What happened to the \$585,000 subsequent to the ownership buyout of the Ontario government shares in Graham Software Corp.--I do know that \$50,000 of it, pursuant to the settlement agreement, was paid to the IDEA Innovation Fund.

Mr. Ferraro: We do not have a breakdown of the \$1,022,000. Could you give us a copy?

Mr. Wigdor: I am not sure I have a copy. Mr. Mishchenko, do you have a copy in your file?

Mr. Mishchenko: I do not think we have a copy of the breakdown.

Mr. Wigdor: My files are about 60 miles from here, and as you may have noticed from the couriers, I cannot get things the same day. I wonder if I could turn to representatives of the ODC and ask whether they could quickly provide a copy to the committee of the approved list of creditors adding up to the \$1,022,000. I am certain they have it in their files. If they cannot, I am sure we can produce a copy. That may be the fastest way of getting one into the hands of the committee.

Mr. Chairman: Okay, we will get that resolved later. A couple of quick questions from the chair before we break for lunch.

Mr. Graham, have you incurred any personal losses as a result of what has transpired?

Mr. Graham: Yes, as a matter of fact I have.

Mr. Chairman: Significant losses, or would you prefer not to talk about them?

Mr. Graham: I do not have any objection to talking about them. I guess what we are trying to do is to work on the position right now with the accountants to find out--we have to file for capital loss. I do not know the exact amount, but, yes, it is significant. It is very significant.

Mr. Chairman: I notice that in your statement, you mention the company is still operating through new owners.

Mr. Graham: That is right.

Mr. Chairman: Who are the new owners?

Mr. Graham: Per se?

Mr. Chairman: You have no role in the new company whatsoever?

Mr. Graham: No.

Mr. Chairman: It retains the name.

Mr. Graham: Do you mean, do I have any role operationally in the company?

Mr. Chairman: In any respect.

Mr. Graham: I am a shareholder in the new company.

Mr. Chairman: A minority shareholder?

Mr. Graham: Yes.

Mr. Wigdor: Excuse me. Technically, you have a convertible debenture.

Mr. Graham: Right.

Mr. Wigdor: You are not yet a shareholder.

Mr. Chairman: How significant is that in respect to an ownership role?

Mr. Graham: Could I inquire about--

Mr. Chairman: Can you inquire what?

Mr. Graham: Can I inquire of the purchaser? I do not want to be in a position where I am describing a private company structure. Let me confer with counsel.

Mr. Chairman: Perhaps you can do that later, and let me know after lunch.

Mr. Graham: Sure, I can do that for you.

Mr. Wigdor: I do not think there is any harm in saying it is a small minority position. I think that is the thrust of the chairman's inquiry.

Mr. Graham: Okay.

1150

Mr. Chairman: You talked about this being a growth industry, obviously, when you got into the business. Has anyone else in Canada established a similar software publishing firm?

Mr. Graham: Not to my knowledge, no.

Mr. Chairman: No one is filling the void you thought was there.

Mr. D. W. Smith: May I ask a supplementary? You say you have a convertible debenture. Is that your position with the new company?

Mr. Graham: Yes.

Mr. D. W. Smith: Would that convert to common shares at some later date? Is there a specific time on that?

Mr. Graham: In 24 months.

Mr. D. W. Smith: In 24 months you could become a common shareholder.

Mr. Graham: That is correct.

Mr. Chairman: In your statement yesterday, you mentioned that informed forces advised you about the proposal before Management Board of Cabinet, and we have talked about having information about IDEA originally going to the private sector and so on. Can you talk about who those informed sources were?

Mr. Graham: My understanding from Geoff and Harold was that there were various proposals going before Management Board and that it was about to conclude a selection for a management group to take over the portfolio.

Mr. Chairman: In terms of informed sources, you are talking about IDEA personnel and no one else. I wondered why you phrased it that way, "informed sources," rather than saying, "IDEA personnel advised me." You suggested that someone with an in to inner government circles was providing you with that information. That is the way I read it, in any event.

Mr. Graham: They were the sources of information for us regarding the investment.

Mr. Chairman: I am just wondering why you did not specify that, rather than couching it in terms like that.

Mr. Graham: Just the choice of phrase.

Mr. Chairman: It raises questions.

On your list of expense accounts, it is noted, "Having lunch with Abe

S." on a number of occasions, and we know of your long-term relationship with Mr. Schwartz. Did you discuss your situation with Mr. Schwartz or solicit his advice and assistance at any time along the route?

Mr. Graham: At no point did I ever solicit his advice or assistance.

Mr. Chairman: You kept him up to date on what was transpiring and expressed your concerns.

Mr. Graham: I would say it would be more along the lines of expressing dissatisfaction.

Mr. Chairman: Did he ever indicate he would look into it for you?

Mr. Graham: Absolutely not.

Mr. Philip: What was the purpose of charging it as an expense against the company if the luncheon did not produce something for the company? It was a purely social lunch. Do you not pay for social lunches yourself, rather than charge them against the company?

Mr. Graham: In answer to that, yes.

Mr. Philip: But you did not; it is an expense account.

Mr. Graham: I beg your pardon?

Mr. Philip: You did not. It is an expense account against the company.

Mr. Sargent: That is a crock. What are we talking about here?

Mr. Chairman: All right. We will have an opportunity to pursue this further. In any event, did anyone else in your management team meet with Mr. Schwartz to discuss the situation?

Mr. Graham: No.

Mr. Chairman: Not that you are aware of.

Mr. Graham: No.

Mr. Chairman: What about Michael St. Amant? His name came up a number of times yesterday. Did you ever talk to Mr. St. Amant?

Mr. Graham: Yes. Ken and I went to see Michael St. Amant during the transition period. We were informed by the IDEA folks that Michael St. Amant was in charge or seemed to be in charge of the transition. Ken and I had two meetings with him. The first time we met him, the meeting never got going anywhere, because he had to leave the meeting and go to see the minister or something. Whatever it was, we had to come back. Our inquiry of Mr. St. Amant was: "What is happening? We are having a very difficult time understanding."

Mr. Chairman: That was your first meeting with Mr. St. Amant. This was the thrust of the meeting.

Mr. Graham: The first meeting never went anywhere. We showed up. We were there physically twice, but we had one meeting.

Mr. Chairman: You met him only twice.

Mr. Graham: Right.

Mr. Chairman: The first meeting went nowhere.

Mr. Graham: Right.

Mr. Chairman: The second meeting essentially dealt with what was happening.

Mr. Graham: Right. I was also at a meeting of the Software Developers Association at a later date with Mr. St. Amant. We did not have the meeting. All I am saying is that he was also there.

Mr. Chairman: St. Amant, in the testimony yesterday, was one of the biggest boosters of investment in your firm and additional investment for the Mazdamon software. You have had only two meetings with him and one was not really to discuss, obviously, what this firm could do. We also had testimony that Mr. Schwartz was seen in Mr. St. Amant's office having a discussion. Do you have any idea whether that was related to your firm?

Mr. Graham: I have no idea whether it was but I would be very surprised if it was.

Mr. Chairman: Do you have any suggestions to offer to the committee as to why Mr. St. Amant was so enthused about an IDEA investment?

Mr. Graham: He had taken an awfully long time, from my understanding, to evaluate the software industry: the structure, the shortcomings, the required stimulus.

Mr. Chairman: Did he have a background in that field?

Mr. Graham: I do not know what his background is.

Mr. Chairman: I do. Anyway, go ahead.

Mr. Graham: In our conversation he seemed quite up to speed on what was going on in the industry. I do not know whether he has a background in that, whether it was through research that he had commissioned or whether he did it himself, but he was certainly up to speed on it.

Mr. Chairman: In any event, it seems more than passing strange to me that he was so enthused and had never really discussed the nitty-gritty of the proposal with you or representatives of your firm. I am just wondering about the other aspects that I do not think you adequately addressed. Before we shut off, maybe you can quickly comment on the--

Mr. Philip: What was Mr. St. Amant's background, since you alluded to it?

Mr. Ferraro: He has hired quite a few in government.

Mr. Chairman: We all make mistakes. I want to talk about the matters dealing with comments about the forward planning and several suggestions about the planning of your business. We talked about looking at your management structure. You had a rather significant operation--there is no question about

it--as a startup firm. One of the submissions to the IDEA board was that 80 per cent of your sales would be in the US. There are various expressions about the capability of management.

I am just wondering whether, in retrospect, you think you overextended yourself initially when you were starting off in a new area. Do you share any of the concerns that have been expressed by individuals who have looked at your operation?

Mr. Graham: In retrospect, I think one of the things you have to appreciate is that the objective and goal we set out to achieve was of an international structure and nature in co-operation with IDEA Corp. as our venture partner.

Mr. Chairman: Do you not crawl before you walk? That is the point I am making.

Mr. Graham: I have described it before. It is akin to building something such as Square One. You have 300 kiosks for retail outlets and then, after having filled 50 of them, they pass legislation that there cannot be any more retail outlets. You have a structure that is built to provide services to many and then it is stunted as the investment starts to return, so you end up with a heating system for 200 and a parking lot and taxes, etc. That is the type of thing.

Mr. Chairman: I do not want to rule out your opportunity to provide a rationale, but I think a short answer will do. Obviously, you do not accept those conclusions that have been drawn by others or the conclusion that I have drawn here. You think that was the appropriate way to proceed. Essentially, I think a one-word answer will be fine.

Mr. Graham: "Yes" would be the answer.

Mr. Chairman: We will break for lunch at this point, and Mr. Wildman will start the questioning at 2 o'clock.

The committee recessed at 11:59 a.m.

A20N
XC21
- P73

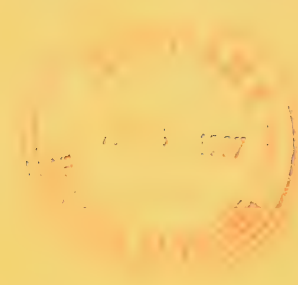
P-63 Public

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

TUESDAY, MARCH 24, 1987

Afternoon Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Sargent, E. C. (Grey-Bruce L)

Smith, D. W. (Lambton L)

South, L. (Frontenac-Addington L)

Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South

Gregory, M. E. C. (Mississauga East PC) for Mr. Davis

Hennessy, M. (Fort William PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From Graham Software Corp.:

Graham, T. D., President

Wigdor, R. J., Legal Counsel and Secretary

Wawrew, K., Executive Vice-President

From the Office of the Provincial Auditor:

Mishchenko, N. J., Director, Special Assignments Branch

Archer, D. F., Provincial Auditor

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Tuesday, March 24, 1987

The committee resumed at 2:08 p.m. in room 151.

GRAHAM SOFTWARE CORP.
(continued)

Mr. Chairman: Come to order, please. My first questioner scheduled is Mr. Wildman, but he has deferred and we are going to ask Mr. Philip to lead.

Mr. Philip: Mr. Graham, in answer to a question from Mr. Ferraro--I am trying to get the Hansard. Unfortunately, they sent me down the Instant Hansard for a later time in the hearings, but I have checked with a number of people and their recall seems to be similar to mine. Did you or did you not testify to Mr. Ferraro that at the time of the \$41,000 paid out by the Ontario Development Corp., or just prior to that, no one in your company, to your knowledge, had made attempts to sell the company?

Mr. Graham: That is correct.

Mr. Philip: Is that correct? I wonder if I can provide you with a document, a letter to Sharwood and Co., specifically to Mr. Cutts, that is signed by Andrew Skerlec, vice-president of your company at that time. It says: "Over the past two months, we have contacted a number of software companies, both in Canada and the US in our attempt to sell the Mazdamon product. At this time, we have no firm offer from any of these companies."

We have a list of the companies that were contacted. You just testified that you did not try to sell the company. This letter would seem to indicate according to your vice-president, that you were attempting to sell the company.

Mr. Graham: You are confusing the product and the company. Mazdamon is a product; Graham Software is a company.

Mr. Philip: So it was only the product you were trying to sell and not the company.

Mr. Graham: Yes, we approached various people concerning selling the rights for Mazdamon, not the company.

Mr. Philip: You also testified this morning in answering my questions that at the time the \$41,000 was paid out, it was not beyond the possibility that you would have paid that yourself.

Mr. Graham: Probably that is what I said, yes.

Mr. Philip: May I refer you to the paragraph on the top of page 2 of the same letter? "The current situation leaves us with no alternative but to pursue the option outlined in paragraph 5.6 of the Asset Purchase Agreement with Datamatrix which will yield \$500,000 for Graham Software and allow us an opportunity to satisfy the current liabilities to staff and trade creditors."

It very much sounds to me as though you are both selling the company and admitting that you have no option to take up that \$41,000 payment.

Mr. Graham: I have already answered your question about selling the company. You have confused product with company. If in Mr. Skerlec's opinion that was the only option that he understood, that is his opinion. It is not mine.

Mr. Philip: You are not suggesting that the \$500,000 was the product rather than the company, are you?

Mr. Graham: That is the product.

Mr. Philip: That is purely the product.

Mr. Graham: It is the product.

Mr. Philip: The Sutro company that was hired in August, what was it specifically hired to do?

Mr. Graham: To seek out purchasers for Mazdamon.

Mr. Philip: The product or the company?

Mr. Graham: For a venture investment in the company.

Mr. Philip: So they were hired a month before Andrew Skerlec wrote this letter and were asked to sell the company on August 29, 1986?

Mr. Graham: What letter are you referring to of Sutro?

Mr. Philip: I am talking about a letter to the board of directors dated August 29. There is a letter of August 29, 1986, from Sutro to the board of directors that deals with--

Mr. Graham: Is this the letter?

Mr. Philip: Let me read you the first paragraph. It says: "The purpose of this letter is to confirm that Sutro and Co. Incorporated...has been retained by Graham Software Corporation...to contact on its behalf certain prospective purchasers ('the investors') for the company's securities or, in lieu thereof, purchasers for all or a portion of the assets of the company."

What was Sutro hired to sell?

Mr. Graham: Mazdamon.

Mr. Philip: You testified, though, that you were not attempting to sell the company, but only the product.

Mr. Graham: That is right. I was not attempting to sell the company. We were trying to sell the product.

Mr. Philip: What was Sutro trying to do?

Mr. Graham: What it actually did: Sell the product.

Mr. Philip: You just testified that they were hired to sell the company in August.

Mr. Graham: The product.

Mr. Philip: I beg your pardon?

Mr. Graham: The product.

Mr. Philip: You just said the company.

Mr. Graham: No, I did not. I absolutely did not.

Mr. Philip: Maybe we had better identify then exactly what you are talking about. Mazdamon is the product? You are using "Mazdamon" and "the product" interchangeably?

Mr. Graham: They are one and the same.

Mr. Philip: They are one and the same. All right. This morning, did you not testify that there was no attempt by you to sell Mazdamon?

Mr. Graham: No. I was asked, "Was there ever an attempt to sell the company?" I said "no."

Mr. Philip: So the company was Graham Software.

Mr. Graham: Correct.

Mr. Philip: In the letter of Sutro of August 29 that you have, what are they attempting to sell there, the company or the product, namely, Mazdamon?

Mr. Graham: The product, which is exactly what they did.

Mr. Philip: The first paragraph says "has been retained by Graham Software" to contact on behalf of its purchasers "for the company's securities." I take that to mean Graham Software, is it not?

Mr. Graham: It could mean Software Channels Inc.

Mr. Philip: It does not say that. It says "corporation".

Mr. Graham: Could I see the letter?

Mr. Philip: I thought it had been supplied to him. Do we have an extra copy of this?

Mr. Ferraro: Can I have a point of clarification? Clarify it if you can for me once again because now I am confused. When I asked the question this morning, and I believe Hansard would point this out, I said, "Did you or any of your associates or anyone you know of attempt to sell the product, Mazdamon, on the 11th hour to any other entity?"

Mr. Graham: If you said "the product."

Mr. Ferraro: Yes, I did.

Mr. Wawrew: I think we are confusing time frames, "on the 11th hour."

Mr. Ferraro: I am talking about when the Ontario Development Corp. came in with \$41,000. That is in the contract.

Mr. Wawrew: That is a different time frame from what Mr. Philip is talking about.

Mr. Ferraro: I realize that. You said unequivocally that no, you did not, nor did anyone you know ever affiliated with Graham Software to your knowledge attempt to sell Mazdamon at the same time ODC was on the verge of putting in the \$41,000.

Mr. Graham: Obviously, by the way the question has been presented by yourself and the difference in the questioning, if there is a confusion, let me clarify it.

Mr. Ferraro: No, there is no confusion from my standpoint. Mr. Philip's questioning is separate from mine. I just want to make sure that what you said this morning--

Mr. Graham: If the final question you are asking is, "Did we make any attempts to sell Mazdamon," the answer is yes.

Mr. Epp: The product.

Mr. Graham: Right.

Mr. Epp: And it is only a product.

Mr. Graham: It is a product, an asset.

Mr. Ferraro: When did you make this attempt, if I can interject, because that is part and parcel of--

Mr. Graham: Mr. Wawrew went to California to talk to venture capital people in Sutro.

Mr. Wawrew: I talked to venture capital people in California a little earlier than the date of that letter. I actually talked to Sutro and what we were trying to do was to get additional venture financing, or if we had to, to sell an asset to keep the company alive, and that is what Sutro was retained to do.

Mr. Wigdor: I think perhaps there is some confusion between selling the company, that is, the shareholders selling their shares, and seeking to sell treasury shares from Graham Software to a venture capital investor. Certainly, the latter was going on all through the spring and summer and fall. To my mind, I reviewed the engagement with Sutro that Mr. Philip is asking about. Certainly, it was within the scope of their engagement, as I understood it, that if they were successful in attracting a new venture investor to Graham Software, they would be entitled to a commission. That is what the first paragraph you just read us said. That is very different from the shareholders attempting to sell their shareholdings.

Mr. Philip: What I have asked the clerk to do is to reproduce the letter, so I am going to ask the chairman to stand down my questions and we will reproduce the document for you and then we will ask you the questions

with the document in front of you. I thought that we had extra copies. I thought we had extra copies of that.

Mr. Chairman: All right. We will move on to Mr. Epp.

1420

Mr. Epp: I want to refer to the letter of September 26, 1986, to Mr. Cutts from Andrew Skerlec. On page 2 of that letter, it says: "The current situation leaves us with no alternative but to pursue the option outlined in paragraph 5.6 of the Asset Purchase Agreement with Datamatrix which will yield \$500,000 for Graham Software and allow us an opportunity to satisfy the current liabilities to staff and trade creditors." Did you or did you not, Mr. Graham, try to obtain some money for the asset you were speaking about here? Did you try to sell it?

Mr. Graham: Yes.

Mr. Epp: You tried to sell it.

Mr. Graham: Yes.

Mr. Epp: What did you try to sell it for?

Mr. Graham: As much as we could get.

Mr. Epp: What was your highest price?

Mr. Graham: The one we accepted.

Mr. Epp: Which was?

Mr. Graham: UCCEL.

Mr. Epp: Which was \$3.25 million.

Mr. Graham: No, it was outlined earlier. Robin, do you want to go through that again?

Mr. Wigdor: As I said before, the assessment of the UCCEL price depends upon the valuation you place on the 8-month contingency payments. Certainly, a reasonable valuation would place it in excess of \$4 million, in my view.

Mr. Epp: Was it your opinion that this was the best option you could follow?

Mr. Graham: Selling it to UCCEL?

Mr. Epp: Yes.

Mr. Graham: It was not only my opinion at the time; it was also Laventhol and Horwath's opinion. If you will move forward to the Laventhol appointment, you will understand that it took an observing and aiding role towards all shareholders to evaluate and assess offers and make a recommendation. Their recommendation, like mine, was to accept the UCCEL offer.

Mr. Epp: You testified yesterday when you read your statement, and

this morning, that you felt Graham Software was in fairly stable economic condition in March 1986. You indicated that up to that point you were in a fairly stable financial position.

Mr. Graham: You were asking this morning whether I could provide to you what our financial position was in March.

Mr. Epp: What happened from March until June that led you to believe you were not in a strong financial position when the ODC took over, as far as the assets and liabilities were concerned?

Mr. Graham: We had utilized our reserve in the Mazdamon launch.

Mr. Epp: But you projected that in March. You knew you were going to buy that. You already had that.

Mr. Graham: That is correct. Yes, we projected that in the summer we would need a capital injection. You have to remember that at the time you are discussing, sales were ramping and I think at that point peaked at around \$300,000 per month.

Mr. Epp: Of Mazdamon.

Mr. Graham: No, for Graham.

Mr. Epp: Of that product, though.

Mr. Graham: No, for Graham. As a result of utilizing the reserve, we had a short cash-flow window that needed to be bridged. You have to understand that at the time of abandonment, our revenues were ramping at a very impressive rate, and in fact, we ended up getting between \$1.3 and \$1.4 million, as we had earlier projected, within the first year. It was at the very peak of the existence of our ramp, at that point when the ramp was continuing up, that we got nailed with the cash flow crunch.

Maybe I am answering more than your question, but to save the day, the capital injection to bridge that period would have more than sufficed for Graham Software to continue on and for none of the assets to have been sold. That alternative was not open to us. I think if you read the Laventhol report, it clearly outlines that.

Mr. Epp: But you would have needed an injection of another couple of million dollars, would you not?

Mr. Graham: Not another \$2 million, no. We never suggested it was \$2 million.

Mr. Epp: How much would you have needed?

Mr. Graham: I think in my earlier statement I said probably somewhere around the neighbourhood of \$1 million would have carried the day.

Mr. Epp: To go back to my comment yesterday afternoon, after you had made your statement and so forth and Mr. Blakley was on, if the company had such great potential, why could you not get private investment?

Mr. Graham: To understand the difference between the pre-venture concept and the venture concept, you have to understand the criteria for when

a venture capitalist enters the scene. To attract venture capital in a startup position and with the size of the project we were doing, it made it a target for IDFA, not for traditional venture. Bridging the issue and allowing the escalation of revenues, certainly only into the following year, would have put us in a position to approach venture capitalists. It was premature. I think, to be honest with you, the handling of the affair was uninformed and premature.

Mr. Epp: It seems to me that if you had this great cash flow problem, it was brought on by yourself, by the way the company was being managed, because you had a considerable amount of money that came forth from the government and this should have been predicted.

Mr. Wigdor: It was predicted, and the government was informed.

Mr. Epp: Maybe you would not have set up an office in Europe and all over to spend money.

Mr. Wigdor: It was predicted, and they were informed. What more would you like them to do?

Mr. Epp: The fact is that anybody who gets \$5 million to start a company--\$5 million from the people's money--should be able to run more than a year and a half to two years and not spend at such a rate that there is no money left over after a year or a year and a half of operation.

Mr. Graham: I am going to let Ken Wawrew talk to that issue, but let me explain something to you, Mr. Epp. I will share a comment with you that UCCEL made to us after purchasing Mazdamon, and the purchase price. They said they were going to spend more in the first year launching that product than they had paid for it.

To understand the economy and to understand this industry and what it costs, you will be left with only admiration for what we did. One of the basic problems is that no one would take the time to get involved; to get active with it. They were understaffed, ill-informed and premature in their decision. It can leave me with only one belief: It had nothing to do with the business case.

Mr. Epp: Mr. Graham, maybe we are on the wrong side here, but I could tell you--

Mr. Graham: Mr. Wawrew, could you talk to that?

Mr. Epp: --I am sure there is not any great admiration from the public out there after losing \$5 million on the venture.

Mr. Graham: And do you know what? There should not be, either.

Mr. Wawrew: Mr. Epp, maybe I can make one statement. When I went through my files this morning, I circulated a letter that I received from Frank Morgan. He is the president of Miller Communications. Miller Communications is what most people consider the top high-tech communications firm in the industry. It is the communications firm for Ashton-Tate and Compaq Computer. It was the communications firm for Lotus in its early days. This is a personal matter, where Mr. Morgan was recommending me to somebody.

There is one statement in there. I think you have a copy of this. It was circulated this morning by Mr. Arnott. That statement says, "I am convinced Graham would have made it big if the government had not pulled the plug." This was unsolicited from Mr. Morgan. Mr. Morgan was one of our largest creditors and continued to support Graham, and was not receiving any fees. So there is some admiration in the industry for what we have done.

Mr. Epp: Admiration from one gentleman. If you expect me to believe that kind of crap, you have to believe something else. If this is such a damned good outfit, then why is there not more private money in it? I said that yesterday and I will say it again.

Mr. Wawrew: Are you saying that Mr. Morgan would lie?

Mr. Epp: I am not saying what he would do. I am saying that if it is such a great venture, then how come there is not a lot of private money out there? There are a lot of people out there who want to make money and they will put money into your venture if they believe in it and if they believe it is being run well.

Mr. Graham: And when it leaves the pre-venture area. Let me explain something to you. Prior to all of the press on this, we were approached by the Quebec government for a proposal to put in \$18 million. We also had another proposal, and we had a verbal agreement too, for \$10 million in equity financing from another private firm. That went. Gone.

When I took the precautions to ensure that we would be in a position not to be dealing only with this government for funds, I went to several investment meetings and had several people down the pike on that issue. The second this thing hit the press, that was gone. We lost the opportunity of a new venture group taking over the portfolio, only to end up with managers who know little to anything about venture, little to anything about our business. We lose the opportunity in Quebec and we lose the private sector opportunity. Please do not tell me people were not interested in this project.

Mr. Epp: How much money did you get out of this company for yourself as far as salaries and so forth were concerned?

Mr. Graham: I do not know--\$160,000 or something.

Mr. Epp: Yes, and Mr. Wigdor got \$240,000. That is \$400,000. How much did you get?

Mr. Wawrew: While the ODC was the shareholder or after?

Mr. Epp: No, just during the time that you have been employed by the company.

Mr. Wawrew: While ODC was a shareholder I took \$72,000 salary, and after ODC was out Mr. Graham paid me additional salaries.

Mr. Epp: Of?

Mr. Wawrew: My salary is \$120,000 a year.

Mr. Epp: Yes. So there is \$500,000. You see, if you people had not taken as much out of the company as you did--

Mr. Wawrew: I also invested--

Mr. Epp: --there would have been \$500,000 to go into that company--

Mr. Graham: That is not taking out of the company.

Mr. Wawrew: I also personally borrowed \$100,000 which I still owe and I pay interest on.

Mr. Graham: That is irrelevant, though.

Mr. Epp: I am just saying there was a lot of money taken out that did not need to be taken out.

Mr. Graham: Yes, and I will tell you something else. If the continued bunglings--we spent more than \$200,000 on legal and accounting fees to update ODC and to try to inform it, not to mention a multiplicity of hours in management time trying to get ODC up to speed to understand, to no avail. Look at the legal fees and so on, and start racking up the cost of that, of the misinformation program. You keep talking about this company as if we are taking exorbitant salaries and it has destroyed the company. I have news for you. We never took those salaries until they were out.

Mr. Epp: So you never got any money for yourself until the thing went bankrupt.

Mr. Graham: I stopped in May, and from May until the end of January I took nothing for my expenses, which I underwrote personally, and I took nothing for my salary. I had \$1.5 million in it.

Mr. Epp: May of what?

Mr. Graham: Of last year.

Mr. Epp: Of 1986.

Mr. Graham: That is right, but I put in \$900,000 in June. Please do not tell me about the commitment. The staff sent their cheques in to participate, and that was vetoed. I know the track you are going down and it is wrong.

Mr. Epp: I do not believe I am wrong.

Mr. Wawrew: This is not the only company that has experienced this from ODC, where there is no real, serious analysis of the product, the opportunity or the distribution. We are aware of other ODC investments or IDEA investments where the same tack has been taken, where the people did not come in with a true interest in the company, to see whether or not there was any value there. It was clear the objective was to get in and wind the company down. You can talk to other companies; do not just talk to us. We are not the only ones.

Mr. Graham: My only question is why? Yesterday, I found out that the government made a commitment in September and, in October, it retracted from the commitment and did not even inform us.

Mr. Wawrew: The Globe and Mail had some excellent examples of it this morning.

Mr. Epp: There was a statement in the budget, as indicated yesterday, that very clearly spelled out the fact that IDEA Corp. was going to be changed. It was going to be wound down.

Mr. Graham: Right, and we contacted IDEA.

Mr. Epp: For someone not to find that out until March or April of the next year--

Mr. Graham: When we contacted IDEA there was no problem, it was a name change.

Mr. Epp: It was not a name change.

Mr. Graham: What it was doing was changing the name on it and it was going to be resurrected in this form. Then the second issue was, no, it was actually dead. The third issue was that it was going to a professional, private sector management group and then, at the last minute, we were informed it was now with ODC. I do not believe it had expertise on staff, funds or anything else to continue its commitment.

Mr. Chairman: Mr. Philip, you still have 10 minutes. Do you want to finish off now?

Mr. Epp: I want to clarify one thing. The budget stated, "The present IDEA Corp. will be wound down." That is in the budget of October 24, 1985. If there was any indecision as to whether it was going to be wound down, I think it was clear in the budget of the Treasurer (Mr. Nixon).

Mr. Graham: You can image the zeal of speed with which we contacted our financial partner to ascertain the scope of that statement.

Mr. Philip: I want to go back to whether you were attempting to sell the company. I gather you have a copy of the item marked 24, the letter to Mr. Arbus, that is signed by you.

Mr. Graham: Yes.

Mr. Philip: I refer to the second paragraph: "We propose to sell 100 per cent ownership of" Graham Software Co.--I presume that is what "GSC" means. Do you see that sentence?

Mr. Graham: Yes.

Mr. Philip: You have signed it at the bottom.

Mr. Graham: Yes.

Mr. Philip: Then you were trying to sell the company.

Mr. Graham: My understanding of your question is--I would really prefer to have back the original question--is whether I was attempting to sell the company. Perhaps incorrectly, my assumption is whether it was to anyone else. That was the offer we had. The line of questioning you are going down is whether there was an attempt to sell the corporation other than that one. No.

Mr. Philip: That is not what I asked. I asked whether you were attempting to sell the company. You said no, that you were trying to sell the

product, namely Mazdamon. I believe, if I am not mistaken, that you said at one point that the letter of September 26 by Skerlec was his position and not your position, and yet I find very little difference, if I take the letter of Skerlec dated September 26, and your letter of September 25. Can you explain the difference?

Can you explain the letter of August 29 which seems fairly clear to me. The first paragraph says, "...For the company's securities, or in lieu thereof, purchasers for all or a portion of the assets of the company." It seems to me that you are selling the company.

Mr. Wawrew: I would not mind explaining that paragraph since I met with Sutro and Co. Inc. and established this agreement. The purpose of the meeting that led to this agreement was a meeting with Sutro where the company, as you know, had some financial problems at that point and we were investigating many alternatives to solving those financial problems. Sutro and Co. is a large investment banker in the San Francisco Silicon Valley area. They undertook to help us. To define exactly how that help was going to come, whether it was going to come through corporate partnering, hooking us up with a venture capital firm or selling one of our assets to gain capital, to let the company go on with its other products, we did not know at that time. It could have been all of the above or none of the above. They were retained to help us solve our problems.

1440

Mr. Philip: If it were all of the above, or none of the above, but in fact just a trial balloon, how can you explain why Mr. Graham would say that he was not trying to sell the company, when you had a company that was in fact engaged in looking at all the of the alternatives, including--

Mr. Wawrew: We were trying to solve our financial problems.

Mr. Philip: Including selling.

Mr. Graham: It is easy to understand this. The main focus of the activity--

Mr. Philip: Gosh, so many of us here cannot seem to.

Mr. Graham: Number one, I have no idea what track you are going down, but let me explain this. The objective we were trying to accomplish was to sell the product. To say we would not consider the sale of the company--we would consider it. I mean, what is the point?

Mr. Philip: We did not say you would not consider the sale of the company; you did.

Mr. Graham: I beg your pardon?

Mr. Philip: We were not the ones who said we would not consider the sale of the company. You were the one who said you were not selling the company.

Mr. Graham: That was not our objective. That is absolutely correct. Our objective was not to sell the company. Our objective was to sell the product.

Mr. Wigdor: That is not what this contract is about.

Mr. Philip: Then on September 25 you say--and I assume that since you signed it, you wrote it--"We propose to sell 100 per cent ownership of GSC." You were trying to sell the company. Furthermore, you say that you have told Mr. Cutts, "who has been retained by Ontario Development Corp.," of that, "and he feels these steps are a logical conclusion to the current situation."

What is the logical conclusion? The selling of the company? That is what that letter says. I am sorry. I only taught English for four years in high school, and that is what I read this to say.

Mr. Gillies: I have located your August 29 letter. I see--correct me if I am wrong--the sale of the whole company as one of a list of options.

Mr. Philip: That is right.

Mr. Gillies: It says sale "of the company securities or, in lieu thereof, purchasers for all or a portion of the assets." Are you telling us--

Mr. Wigdor: (Inaudible) the text correctly, Mr. Gillies and Mr. Philip. I apologize for contradicting your interpretation. I think you should construe this in the way Mr. Wawrew explained it was intended. Sutro was engaged to try to raise capital or sell assets. The letter is addressed to the company, not to its shareholders. It talks about these prospective purchasers . The money that would be raised would not go to the shareholders; it would go to the company. You are reading this as if Sutro were being engaged by the shareholders to find someone to purchase their shares. It just is not true. That was not the agreement with Sutro, and that is not what it was doing.

Mr. Wildman: How do you (inaudible) the letter dated September 25 to Mr. Arbus.

Mr. Wawrew: Just before we leave this one, I would like to point out, "Proposed Investors to be Contacted by Sutro." That is exhibit A to the Sutro letter. Anybody who is familiar with the industry would know the entire list of prospective companies that could purchase the Mazdamon product.

Interjection: Or Graham Software.

Mr. Philip: Or Graham Software.

Mr. Chairman: Before we have everybody jumping into this, Mr. Philip has the floor.

Mr. Wawrew: That could be one way to purchase the product.

Mr. Philip: Let me walk through the document and try--

Mr. Graham: I can make it a lot easier for you; I can make it very simple.

Mr. Philip: Let me walk you through it then, and maybe you can comment on it. Okay? I will grant you that perhaps we could see the letter of August 29 as a list of possibilities, one of which might be the sale of the whole company, including all its assets or all its shares plus assets or however you want to dispose of that company, but then when we get up to the

letter of September 25 and the letter of September 26, I do not think there can be very little doubt that what you are selling is the company. You just said you were not trying to sell the company--or you said that earlier--only the product.

Mr. Graham: Fine. I will gladly concede the point because it really has no relevance to me from the point of view that my objective was to sell Mazdamon. That was the main focus of what I was doing.

Mr. Philip: It has relevance to us when you say one thing and then say something completely different from that.

Mr. Graham: I am sorry; I misunderstood it the first time and I think I have clarified it now.

Mr. Epp: After the evidence was shown.

Mr. Philip: In this committee for the last few days we have had people who say one thing one minute and then when a document is shown, they change their mind about it. This is the second one in two days. I must say I am getting a little frustrated with the witnesses. You were trying to sell the company on the 25th as one of your options anyway. It certainly is fairly clear from those letters that you were trying to sell the company.

I had an item here that I wanted to follow up from this morning. I do not believe anybody has questioned you directly or given you an opportunity to respond in a point-by-point way with the memorandum prepared by ODC on February 9, 1987. Mr. Chairman, can you refresh my memory? I do not think anybody has taken the witnesses through the first page on company failure and the accusations that are made there. Is that correct?

Mr. Chairman: That would be right

Mr. Philip: We have kind of bit and pieced it but not really gone through them one by one. I would like to go through one by one and give you an opportunity to respond for the record.

Mr. Wigdor: Could we have a copy of the memorandum before you start, Mr. Philip?

Mr. Philip: I thought those were in the documents that you have? It is item 6 for members of the committee; item 5, I should say.

Mr. Wigdor: Are extra copies of that available?

Mr. Epp: On a point of order, Mr. Chairman: Can I suggest that this book be made available to the witnesses?

Mr. Philip: They do have a copy.

Mr. Wigdor: We have a single copy among the three of us that Mr. Graham reviewed yesterday evening, but I have not had an opportunity to review it.

Mr. Philip: Can we get an extra copy? May I refer you to--

Mr. Wigdor: Is it item 6, Mr. Philip?

Mr. Philip: No, I made a mistake; it is item 5. You only find out what the document is on the second page where it says, "Ontario Development Corp. February 9, 1987." The Ontario Development Corp. does not seem to know the document.

Interjections.

Mr. Philip: In fairness to the witnesses, I am going to ask them about item 3, but it is not fair for them to have to respond without reading it in the whole context. I wonder if you want to take a couple of minutes and go through it. What I will be asking you is just the items under sub 1 of item 3.

Are you ready? I do not want to rush you.

Mr. Wigdor: It is a remarkable memorandum. I have some immediate comments on other parts, but if you do not want to hear them, I will wait for another opportunity.

1450

Mr. Philip: What part do you want to comment on?

Mr. Graham: Why do we not just start at the top and go right through?

Mr. Wigdor: The one that struck me was Mr. Biddell's inquiry, which is the very last item, but you could start at the top.

Mr. Philip: How about if I take you through the ones I was going to question you on? In fairness to you, if there are some other comments you want to make on another part of the document, far be it from me to stop you; I am sure we would be happy to hear them.

This is a document dated February 9, 1987, an unsigned memorandum by the Ontario Development Corp. There are certain comments in here I am not going to use. I just want to deal with some of the specific accusations. Some of them are a bit editorialized.

"Company could not carry on business. In September 1986--

Mr. Wawrew: Summer.

Mr. Philip: Yes. "In summer 1986 staff of 30-40 cut back to 10 (approx.)" Do you want to comment on that? Is that factual?

Mr. Wawrew: In the summer of 1986, that is when we were achieving our top revenues for three months in a row. One month was \$300,000 and two other months were very close to \$300,000. We did cut approximately 30 staff, but it was not back to 10. If I recall the number, I think it was 24.

Mr. Wigdor: By February 9, 1987, the number might well have been 10, though.

Mr. Wawrew: Yes.

Mr. Philip: But not in the summer of 1986.

Mr. Wawrew: No.

Mr. Philip: "Offices in United States and Germany have been closed, and Toronto office relocated."

Mr. Wawrew: That took place in 1987 but did not take place in 1986.

Mr. Philip: When in 1987 would that have taken place?

Mr. Wawrew: In January 1987.

Mr. Philip: I hesitate even to ask for a comment on the next one because we have just been through it in various ways, but "New investors could not be found."

Mr. Wawrew: The comments I got when I visited venture capital firms were reinforced, but as Mr. Graham said, we were early. The other point is the length of time it takes to get a venture capital investment and we did not have the time. They estimate a six-month time span to get a venture capital investment in and there was not time.

Mr. Philip: "Major Ontario software authors are attempting to withdraw publishing rights from Graham Corp."

Mr. Wawrew: It depends on where in time you draw the point. Toward the end of 1986 and early in 1987, that was definitely the case because the company was in financial trouble and was not moving forward.

Mr. Philip: As of the writing of this, February 9, 1987, major Ontario software authors were attempting to withdraw publishing rights.

Mr. Wawrew: Yes.

Mr. Philip: "As indicated, major software product...had to be sold to pay creditors." We have just been through that.

Mr. Wawrew: That was the option we ended up doing.

Mr. Philip: That was one of the options.

Mr. Wawrew: There were other options, obviously. Other options were to recognize the value of that product, invest in the company, bridge the cash flow and move forward with it.

Mr. Gillies: Could I have a supplementary on that point, Mr. Philip?

Mr. Philip: Yes.

Mr. Gillies: In their testimony, people from the the ODC indicated that they felt you were unwilling to sell Mazdamon and that in fact they moved in to pay the \$48,000 royalty because they believed you would let it go rather than see the transaction take place as it did, the suggestion on their part being that they thereby saved, implicitly the taxpayers, the creditors, more than \$2 million. How do you respond to that?

Mr. Wawrew: We were willing to sell the product and that is indicated by the agreement I negotiated with Sutro in August 1986. We were

willing to explore all options to save the company. That is basically what that letter says and these people wanted to help us.

Mr. Gillies: Why then would you think that ODC would make the allegation it did, that you were almost dragged into selling?

Mr. Wawrew: I do not know. We worked hard at exploring all the options possible to save the company. Clearly, selling Mazdamon was one of the options documented by this, so I do not know the answer to that.

Mr. Wigdor: If you would review the events of the night of December 1 to the morning of December 2 in any detail, you would come to a clear realization of which party was dragging its feet.

Mr. Philip: I know Mr. Epp dealt with this in different ways earlier, but since we are dealing with this document, for the record, would you go through each of the following accusations?

"Terry Graham continued to be paid a salary of \$168,000 per annum. His salary plus expenses and car allowance on an annual basis exceeded \$200,000." Give us a quick summary of your response to that.

Mr. Graham: As I have said I do not how many times, I had discontinued taking salary. I was underwriting my own expenses for over a month.

Mr. Philip: But you recovered that at a later date.

Mr. Graham: That is right. This implies the taking out of money when the company was in financial difficulties. That was not the case at all. It was not the case with myself; it was not with Ken; it was not with Bill Douglas; it was not with Andrew Skerlec.

Mr. Philip: We will go through the next ones, which you have also explained earlier, including Robin Wigdor, who was paid a car allowance of \$3,000.

Mr. Wigdor: If I might comment on that, that is totally untrue.

Mr. Philip: You are saying that is not factual.

Mr. Wigdor: The only basis upon which that could have been found in the report was that IDEA Corp. agreed that I could be paid a car allowance of \$3,000. I was not paid a car allowance of \$3,000.

Mr. Philip: You are saying that was never a debit to the company. Neither at the time the memo was written nor at any future time did you ever get a car allowance of \$3,000.

Mr. Wigdor: That is correct. When I travelled on behalf of my client, I charged my travel costs, just as I would to any other client.

Mr. Philip: "Mr. Wigdor also insisted recently that companies owned by him be paid an additional \$55,000 from company funds, and Terry Graham agreed to pay the amount." What was the \$55,000 for?

Mr. Wigdor: It certainly would be more accurate if it correctly stated the sequence of the events. First, Mr. Graham agreed to pay the amount

of behalf of Graham Software Corp.; then I insisted the company honour its obligation to me, not vice versa.

Mr. Philip: What was the \$55,000 owed to companies you owned? What was that for? That is not legal fees.

Mr. Wigdor: Because they were not legal fees, I felt entitled under the Solicitors Act to charge fees through a corporation rather than personally. It was compensation to me for services rendered in connection with the UCCEL Corp. transaction, specifically for making and keeping the deal together in the face of great adversity through December and January, and for assuming substantial personal financial responsibilities, which I do not believe any solicitor would ordinarily have undertaken in Canada in connection with this transaction.

Mr. Philip: They were fees for services that one could call of a quasi-legal-accounting kind of business function?

Mr. Wigdor: Perhaps "business brokerage" would be the best descriptive phrase.

Mr. Philip: I suppose it really does not matter. Why would it be paid to one of your companies rather than to your law firm?

Mr. Wigdor: To the extent a lawyer can earn compensation through a corporation, he may enjoy the small business tax rate, if he is a small business.

Mr. Philip: That is what I figured. Okay. I do not really care. It is normal practice to be done.

Mr. Epp: Is that \$55,000 in addition to the \$250,000 you received as a legal adviser to the company?

Mr. Wigdor: I do not know. I do not know the source of the \$250,000. I have not seen any statements. I have not learned of the derivation of the figure. Quite frankly, I did not come expecting to be questioned on this and I have not done my own arithmetic. I do not know whether it is part of the \$250,000 figure or not.

Mr. Epp: Or whether it is in addition.

Mr. Philip: Of course, one of the problems we have is that there are no audited statements for the last 18 months.

Mr. Wigdor: There will be very shortly.

Mr. Philip: I beg your pardon?

1500

Mr. Wigdor: Price Waterhouse has been actively engaged in conducting an audit for some weeks now.

Mr. Philip: Notwithstanding the fact that you have argued that you did not collect the money at this time, that they were debits, a debit being money in the bank, so to speak, that you were eventually going to be paid and you eventually were paid, would you, in the light of that, agree with what

seems to be the summary that notwithstanding the dire circumstance of this company the senior officers continue to pay themselves excessive salaries?

Mr. Wawrew: Maybe I could answer that. I underwrote all my business expenses as well and stopped drawing a salary in August. I am not a very well off person. I was sweating when the company was in financial trouble. I underwrote all those expenses myself. I was in trouble.

Mr. Philip: So at that time when you were not collecting--

Mr. Wawrew: It was not money in the bank.

Mr. Philip: --you did not see it as a debit that you would eventually collect?

Mr. Wawrew: It was certainly a salary that I would have loved to have collected, but it was not guaranteed that I was going to collect that money. I was sweating.

Mr. Philip: Would you feel that if these moneys had been paid at that time, or if you had some assurance of it, that would be a reasonable amount to collect from a company that at least in the early stages, was not exactly in glowing financial conditions?

Mr. Wawrew: The reason we stopped taking salary was because the company was not in a glowing financial situation. That was an indication that we were prepared to adjust our compensation plans significantly to help the company.

Mr. Philip: If there is no money in the pocket you cannot take it out whether you wanted to or not.

Mr. Wawrew: We continued to pay salaries of staff. We continued to try to keep the company alive. We kept as many staff as we could employed while not taking any money ourselves.

Mr. Philip: How many of your staff would have received severance pay, bonuses, payment of extra contracts? How would that break down? I recognize that you do not have the audit. Will we be receiving those figures? We have people crying to us on the telephone, as I am sure you did. Mr. Gillies had calls. I had calls from people saying: "We are employees then. We are losing everything. We are not going to get paid or, if we are, we are not going to get very much of a pay. We have given up promising careers in secure positions to work for this company and now we have lost everything."

I am wondering what the settlement is that was eventually reached with the various employees. How did it break down? There seemed to be the accusation with a different company that was wound down; I am not saying it applies to you, but the accusation was made to us, to this committee, that the guys at the top got off okay but the ones further down the line were the ones who got the two month's notice, "Goodbye, Charlie, we are sorry this has happened." Could you give us a breakdown of who got what and what kind of settlements were reached with each of these people?

Mr. Graham: There are various severances for various people. Our response to that would be if anyone is dissatisfied with the way the severance

issue was conducted, I would invite them to call and I would certainly like to meet with them to discuss it.

Mr. Philip: Can you give us a breakdown of what these settlements were, either audited or unaudited, as the case may be?

Mr. Graham: The staff who had been there the least length of time, if I am not mistaken--I am hoping this is right--the guidelines I think provided that they had to be paid one week's salary and I think we paid them two in some circumstances.

Mr. Philip: One week's salary to what?

Mr. Graham: For people; we did it according to the guidelines from the labour department.

Mr. Philip: So you paid them only what was required by law.

Mr. Graham: And paid in excess of that requirement. I think our severance policy was as best as we could possibly do it. In issues like contractual issues--in the case of Andy Skerlec, his severance was \$50,000. That was a contractual obligation. In the case of the US president, Tom Herring, there was an exchange for shares, and the chief financial officer was dismissed at three months.

Mr. Chairman: We are still having problems picking you up.

Mr. Graham: Sorry. The severances were in excess of the labour guidelines but not excessive. I can only repeat that if there is a problem, or if someone has contacted you, I would certainly like to be made aware of the information because I would like to resolve that.

Mr. Philip: We would like to see exactly what the payments were, so would you provide that to us? I assume that you did not sign any secrecy agreements with any of the employees; in other words, an agreement that you would not release information on the package in exchange for their getting a certain settlement. There are no secrecy provisions in the settlements that you reached?

Mr. Graham: Not that I am aware of.

Mr. Philip: That is at least an improvement from some of the other companies that we have been dealing with that argued that they could not release the information because they had contractual obligations with the former employee.

I guess sometimes one has to work from one's gut feelings. If you look at the expense accounts, if you look at the way in which the companies seem to be operating, one has to wonder. Here is a company that is in trouble and, yet, you inform us that you had a dinner with Abe Schwartz, at which you did not deal with company business, and there is a bill here for \$175.20.

Mr. Graham: What is the date on that?

Mr. Philip: That must have been quite a meal.

Mr. Chairman: This is your last question.

Mr. Philip: It is my last meal, Mr. Chairman.

Mr. Wigdor: Before we depart from this memorandum I thought I would have an opportunity to respond to other parts of it.

Mr. Philip: You will after my question. Then you can do it on your time and not on my time of questioning.

Mr. Graham: The date you are referring to?

Mr. Philip: It says here the date prepared was the first day of the fourth month, so it would be April 1, 1986, and it is for the period from March 3, 1986 to March 31, 1986.

Mr. Gillies: It is the one dated March 17. Actually, it appears to be \$113 for a meal and \$62.20 for gas.

Mr. Philip: Okay, \$113 for a meal. Then there is one up above.

Mr. Wildman: For gasoline.

Mr. Graham: The one above is not Abe Schwartz, it is Andy Skerlec.

Mr. Philip: It is Abe--

Mr. Graham: It is Andy Skerlec; it is not Abe Schwartz.

Mr. Philip: So the one up above is not Abe Schwartz; the Abe S. is somebody else?

Mr. Graham: Andy Skerlec.

Mr. Philip: I have trouble hearing you; I am sorry.

Mr. Graham: The one that is registered on that sheet as Abe Schwartz is not Abe Schwartz; it is Andy Skerlec.

Mr. Philip: And \$113 is not Abe Schwartz either?

Mr. Graham: No, that one is.

Mr. Philip: That one is. You testified earlier that that was not a business meeting; is that correct?

Mr. Graham: If I am not mistaken that is the only lunch I ever took Abe out to. As a matter of fact, it is.

Mr. Wigdor: I would like to comment on this.

Mr. Chairman: What areas are you going to refer to?

Mr. Wigdor: First, I would like to comment on the very last statement, "Jack Biddell has been kept informed throughout and concurs with ODC's actions."

I do not think that in my life, I was ever more taken aback than when I walked in yesterday to learn that Mr. Biddell had reported on Graham Software Corp. As far as I know, Mr. Biddell contacted no one in Graham Software Corp.

I was led to understand that he was conducting an inquiry under the Public Inquiries Act. How an official inquiry could have been conducted, granted, into all of IDEA's companies, but into Graham Software in particular, because there are extracts from his report about Graham Software, without his ever having contacted anyone at the company for information, without having given any opportunity to make submissions, and without having had any opportunity to see the evidence before him, I confess, is totally beyond me. How any credence can be placed on a report--I do not know what all it says but I imagine eventually it will become a public document--in which the inquirer has not heard evidence, is also beyond me.

1510

I am further astounded that the Ontario Development Corp. has been keeping Mr. Biddell informed throughout and soliciting his opinions about its actions without anyone from Graham Software ever having been privy to any of those communications.

Second, I find the second-last comment in this memorandum rather interesting. Perhaps it is a Freudian slip. "Throughout, ODC has sought private sector input from merchant bankers, lawyers and others who support ODC's position." I am curious as to whether it sought private sector input from anyone who did not support its position.

We have talked at some length about the advice obtained and the report of Sharwood and Co. As I am sure the Provincial Auditor is going to attest, there have been repeated and strong requests and then demands for access by Graham Software to communications received by ODC from Sharwood and Co. Ultimately we were given a copy of a one-page letter, or a page and a quarter, and were told that was the final Sharwood report.

Mr. Graham contacted the author of that letter and was told that by no means reflected Sharwood's position on the matter but, indeed, that was the final piece of correspondence it had sent to ODC. It confirmed in writing to the ODC that was its final piece of correspondence, and that became the final Sharwood report.

In addition, the Laventhol and Horwath inquiry which, as I mentioned earlier, had the agreement of all shareholders once its scope was expanded to include review of the conduct of the ODC nominee to the Graham board, has been attempting to obtain documentation from the ODC in clear entitlement with the contractual provisions entered into by the government of Ontario, and it has been stonewalled consistently.

Shortly before this proceeding commenced, I was informed that an inquiry it made of the Ontario government as to the government's position on whether it should continue the study at all has gone without reply for almost a month. The settlement agreement entered into between the ODC, IDEA and Graham Software in no way provided that the Laventhol and Horwath inquiry would be aborted, but Laventhol and Horwath is being stymied in the conduct of its investigations and, in particular, in its investigations of the performance by the ODC nominees of their fiduciary obligations to the Graham board.

I see no mention of any of these matters in this memorandum, and I think they are very germane to a summary of the position with Graham Software.

Mr. Chairman: I am going to bend the rules a little bit at the request of Mr. Ferraro and allow him to have one question, and then we are going to Mr. Gillies.

Mr. Ferraro: Thank you, Mr. Chairman. I appreciate Mr. Gillies's indulgence. I would like to give you a copy of this.

Mr. Philip: I appreciate Mr. Ferraro just obtained the Hansard that I referred to earlier. Unfortunately, they supplied the wrong Hansard.

Mr. Ferraro: I want to give you an opportunity, Mr. Graham, to address this. I will refer you to a copy of this morning's Hansard in which I asked you a question supplementary to Mr. Epp's. I would like to read it into the record, Mr. Chairman.

"My supplementary is this. When you sold it for a profit, it was a definite asset to say the least. Getting back to the fact that you did not want to put in \$41,000 at that juncture, and you say you wanted to get ODC involved which is playing poker and I understand that business. My question is very simple. Did you or any representative of Graham Software ever negotiate with any other entity the acquisition of the Mazdamon computer, wherever it was in any shape or form, assuming the government, if I may, did not cure it before the time ran out?"

Your response is: "I certainly cannot answer for any and all employees, but I can answer for myself. The answer is no, I did not."

The next question I asked, "To your knowledge no one in your employ ever negotiated to pick up the assets of Mazdamon which were substantial?"

"That is correct," you replied.

"Failing the government or ODC getting involved?" I asked.

You responded, "That is correct."

In response to that, and in the light of the fact that we have a copy of the letter referred to already by Mr. Philip dated September 25, 1986, signed by you, which clearly indicates that you were negotiating, in my view, to pick up the assets of Mazdamon, assuming you did not pick up the cure, is that not a contradiction?

Interjection: That is how I understood it this morning.

Interjection: I did too.

Mr. Wawrew: I think (inaudible) Mr. Gillies's confusion with respect to the time frame that you were talking about. I think you were talking about at that time frame, right at that time, because it was clear and revealed to everybody that we had dealt with Sutro and people like that.

Mr. Wigdor: The question is about the acquisition of Mazdamon by anyone in any shape or form, assuming the government did not cure the default. So, if Datamatrix reacquired Mazdamon, was anyone, Graham or otherwise, trying to negotiate the acquisition of those rights, trying to back-door?

Mr. Ferraro: The question was, while the government was determining its position and in fact debating whether to come up with \$41,000, I suspect, was there any involvement on the part of any employee or anyone involved with Graham to reacquire or sell the assets, particularly of Mazdamon, and you--

Mr. Wigdor: You now said "reacquire or sell." Here you talk about acquiring.

Mr. Ferraro: "To your knowledge no one in your employ ever negotiated to pick up the assets of Mazdamon which were substantial?" and the answer is no.

Mr. Graham: That is right.

Mr. Wigdor: That is right.

Mr. Ferraro: But your negotiation does not qualify?

Mr. Wigdor: Those negotiations were attended by representatives of the Ontario Development Corp.

Mr. Ferraro: All I am doing, Mr. Wigdor, is giving Mr. Graham the opportunity to correct the record, because it appears to me to be somewhat of a contradiction to say--

Mr. Graham: I assume the line of questioning you are going along is--my understanding of what you are asking is, did I negotiate with anyone, to acquire Mazdamon, with whom I would have a side deal?

Mr. Ferraro: Yes.

Mr. Graham: The answer is, no, absolutely not.

Mr. Ferraro: What do you call the letter dated September 25 then?

Mr. Graham: Where is the side deal in that?

Mr. Ferraro: You are saying, and if I can quote--

Mr. Graham: ODC representatives were at that meeting. What I assume you are asking me is, "Did you surreptitiously, or whatever, have negotiations that the company would not benefit by, but that you would benefit by, in selling the product?" The answer is no.

Mr. Ferraro: Actually, I do not think it was as sordid as that.

Mr. Graham: That is how I took it.

Mr. Ferraro: I just want to know if there were any other negotiations going on to divide assets, because I find it difficult that you would not put in \$41,000 to get back \$3 million.

Mr. Graham: Then that clears it up quite easily. I thought the line of questioning you were going down was, "Did you ever negotiate with anyone on the side to scoop this asset to your benefit?" The answer is no.

Mr. Gillies: On that same point, I have one or two questions. It arises out of what Mr. Wigdor said a few minutes ago. On reflection, I share the concern that has been expressed. If we look at--and it is in our materials--Hugh O'Neil's statement to the House on October 14, 1986, it is pretty clear. I do not know if you have that, gentlemen. It is in a package we have from legislative research. It is press reports followed by Hansard excerpts.

Mr. Graham: What page was that?

Mr. Gillies: Hansard, page 2416, October 14, 1986. My concern is simply this. It is implicit in the minister's statement that Jack Biddell is supposed to be heading up an independent review of the IDEA portfolio, what happened to it and where it stands now. I quote the minister: "....I have asked Jack Biddell to initiate a thorough and complete review of the entire IDEA portfolio." It then identifies four things that he is supposed to look for, including the current disposition of that portfolio.

I would have expected that in the spirit of such an independent review, Mr. Biddell would be talking not only with government officials about the portfolio, but also with the companies. I have a concern, Mr. Wigdor, that you say you have not been contacted by Mr. Biddell, and I will ask you to comment again on that.

My other concern is that in memo 5 from the ODC, it would appear that Mr. Biddell has an ongoing information exchange and relationship and that actions are being checked through him by ODC. Again, this is a seemingly strange relationship to me for a man who is supposed to be conducting an external and impartial review of the portfolio.

1520

Mr. Graham: That is spot on, because in the meetings we had with Brian Cass or Bob Winter, predominantly Brian Cass, we would get to a situation or juncture, and then he would leave and go to the other office, meet with this fellow and come back. Finally I asked, "Who is that person?" I was told, "That is Mr. Biddell." I never talked to him. I visibly saw him, but that was the end of it.

Mr. Gillies: Your impression, and certainly the impression I am coming to, is that the so-called independent review is in fact working very closely with ODC in terms of management decisions on the portfolio, yet you have not been consulted or your opinions sought by the so-called independent review, and I think that is a very legitimate point.

Other members may correct me. My understanding was that Mr. Biddell was being retained, if not under the Public Inquiries Act certainly in the spirit of the inquiries act, and we seem to have a rather cosy relationship developing here between one of the agencies which--I am not prejudging it, but a truly independent review may in fact find ODC is at fault here.

Mr. Wildman: From your questioning and Mr. Graham's response in relation to Mr. Wigdor's earlier statement, am I to understand you became aware, Mr. Graham, that Mr. Biddell was being consulted by ODC?

Mr. Graham: Yes.

Mr. Wildman: But Mr. Wigdor, you were not aware of that until you saw this memo?

Mr. Wigdor: I was not aware that Mr. Biddell had rendered a report until yesterday morning. I was expecting to give testimony to Mr. Biddell in the course of his inquiry.

Mr. Gillies: That is a very good point. To my knowledge, Mr. Biddell has not tendered a report. At least, one has not been made public or finished, so my next question, not to you but to the clerk and the people who assembled these documents, is, what was the source of the excerpt from Mr. Biddell's

report regarding Graham Software that we have in our materials?

Mr. Mishchenko: It was an excerpt from Mr. Biddell's report that we obtained. We obtained a copy of his report.

Mr. Gillies: From him?

Mr. Mishchenko: No.

Mr. Gillies: From--

Mr. Mishchenko: From the Ontario Development Corp.

Mr. Gillies: Well you see, here we go again. The so-called independent report is housed at the Ontario Development Corp.

Mr. Mishchenko: The report was addressed to Mr. O'Neil.

Mr. Wildman: So it went to the minister, and from there it might have gone to ODC.

Mr. Philip: The minister might well have asked ODC to comment on the report, but what I find significant is that--would not the normal procedure be for it to go to all principals involved in the investigation at the same time?

Mr. Wigdor: Mr. Philip, you and some of your colleagues were very critical yesterday about the manner in which information is fed to the supposedly independent board of directors of IDEA Corp. I would be interested in your view of Mr. Douglas and Mr. Cannon. Here we have a situation where, at least with respect to Graham Software, all the information being fed to the supposedly independent Mr. Biddell is coming from the Ontario Development Corp.

Mr. Philip: That is the thrust of my question. I think you will find that my questioning is consistent. I have the same anxieties about this that I had yesterday about the other situation. Why would it not go to both you and the Ontario Development Corp. for comment simultaneously? I think that is the thrust of what Mr. Gillies was going at.

Mr. Gillies: What I am getting at is simply this: There are three or four factors here that are leading me to believe that the independence of this review is severely open to question.

Mr. Ferraro: Mr. Chairman, may I interject here? With great respect, Mr. Gillies, you cannot have it both ways. You stand up in the House and imply--much to your chagrin, the evidence does not substantiate it--that the government's hands are dirty, that indeed someone connected with the government has perpetrated a movement to give more money to a friend of the Premier (Mr. Peterson), which evidence shows does not exist. What action does one take?

You say that according to some inquiries act, it should apply to that. I say to you that the minister and the government took the action they should have taken. They hired a retired chairman of Clarkson Gordon, Mr. Biddell, to do a study of IDEA. Part of that study involves a particular investigation that you wanted dealing with the funds allocated by IDEA Corp. to Graham Software. Obviously, there is going to be some correspondence between ODC, the government and Mr. Biddell. What you want then is a deposition from Graham

Software, which you are accusing initially of being in cahoots with the government.

Mr. Gillies: That is your interpretation.

Mr. Ferraro: You cannot have it both ways.

Mr. Chairman: Let us have some order.

Mr. Gillies: Let me give you the other interpretation, because I think you are completely out to lunch.

In order to try to sweep this thing under the rug, Mr. O'Neil launches a so-called independent review to try to get the heat out of the House. We now find that the so-called independent review has not talked to the companies or, at least, this company, which was a principal in the matter; has worked very closely with an agency that may, in fact, by a really independent review be found to be at fault in this matter; shares information with that agency and brings information forward to this committee before the inquiry is made public. You still sit there and say this is a truly independent and impartial review of the portfolio.

Mr. Ferraro: No.

Mr. Chairman: Order. I am not going to allow this to deteriorate any further. We have witnesses before us. Mr. Gillies, will you proceed with the questions, please? We can get into this debate when we are trying to come up with a report. I do not want to get into this kind of debate about the merits of that. We have witnesses before us and I would appreciate it if you would proceed with the questioning.

Mr. Philip: Mr. Chairman--

Mr. Chairman: No. Do you have a point of order?

Mr. Philip: I have a point of order.

Mr. Chairman: It had better be a point of order.

Mr. Philip: The reasonable way to proceed with this point, and I think it is a serious point that Mr. Gillies raises, is to take a look at the Public Inquiries Act and see whether, in fact, there is a violation.

Mr. Chairman: On with the questioning. We can resolve that later.

Mr. Gillies: Those were the questions I wanted to ask. It has been substantiated by the witnesses that they have not been contacted by the Biddell review. Your belief, Mr. Wigdor, is that the information contained here is one-sided and, I may even say, perhaps prejudicial.

Mr. Wigdor: I think it is a self-serving memorandum. I am not sure a self-serving memorandum can be anything but one-sided. Frankly, I view the failure to disclose and the interference with the supposedly independent inquiry of Laventhol and Horwath Ltd. as probably more serious in terms of the rights of the other shareholders and principals of Graham Software than the Biddell inquiry. After all, it was the Laventhol and Horwath Ltd. inquiry that was commissioned to look into Graham Software in particular, and it has been doing it for about six months now. It is essentially being placed on the back

burner by the dilatory response of the Ontario Development Corp. They demanded it in the first place. We acceded, provided its scope included a review of their conduct.

Frankly, now that they have what they want, I think it is properly the turn of Graham Software Corp. to have a complete airing of the issues before informed, professional accountants, insolvency specialists and the like, who can be brought to bear by Laventhol and Horwath Ltd. Frankly, I do not understand why, six months later, this inquiry is stalled. My information from Laventhol and Horwath Ltd. is that it is stalled because it cannot get answers from the Ontario Development Corp. They cannot get documents that ODC promised to give them. They cannot even get a response to a letter from the counsel they retained as to the ODC position about the continuing conduct of the inquiry. I think that is much more prejudicial, quite frankly.

1530

Mr. Gillies: I think it is a very good point and I agree with you. I see also in Mr. O'Neil's statement announcing the Biddell report that he wanted it completed as quickly as possible and made public. Here we are, how many months later, without a report--probably being held until after the election now--and a part of it surfaces in these documents and certainly not made public expeditiously.

Mr. Wigdor: Why has the Sutro report not been made public to this committee?

Mr. Wildman: I am not sure the questions I had intended to raise have not been answered, but I will ask a couple of short ones if that is acceptable to the witnesses. I ask them to bear with me in that some of it may be repetitive. There are two areas I want to deal with. I think you demonstrated some frustration with members of the committee over the question of what you were attempting to do in your efforts to save your company in the period of August and September 1986. I want you to tell me whether my understanding of your testimony is correct.

My understanding is that you were looking at all options. I suppose you were looking for venture capital or you might call it pre-venture capital. You were perhaps looking for investment by the selling of shares, or the other option that you were looking at, if necessary, was the sale of the company. Is that an accurate assessment of your efforts in August and September 1986?

Mr. Wawrew: The sale of an asset should be added to the list.

Mr. Wildman: Right. The sale of Mazdamon. Okay.

Mr. Wawrew: Or one of our other products.

Mr. Wildman: Yes, okay. In other words, you were looking for an infusion of capital in some way or other.

Mr. Graham: That was the problem, really, cash flow deficiency.

Mr. Wildman: Yes. If the only option left to you was the sale--there were really two options you were looking at specifically. One was ultimately having Datamatrix take back the Mazdamon product at a considerably lesser amount than what you would value it at; is that fair to say?

Mr. Graham: At the time that was negotiated, the thing you have to appreciate is that the provisions under the default were that the product would go back for nothing.

Mr. Wildman: I see. Is that what was referred to--

Mr. Graham: What we did was, we negotiated an extension of the default and we also negotiated an acquisition price for it. When you look at the \$500,000, you cannot assess that as the purchase price. The purchase price would be that and the debt, which would bring the purchase price to between \$1.9 million and \$2 million. As well as that, if there was a possibility, we wanted to see if we could enjoy royalties.

Mr. Wildman: Okay. In the letter that is dated September 26, on the second page, the top paragraph, you refer to the asset purchase agreement with Datamatrix in paragraph 5.6. Mr. Chairman, I notice the clerk has gone, but perhaps our researcher could let us know whether we have that document before us. What tab is it? I am talking about paragraph 5.6 of the asset purchase agreement with Datamatrix.

Mr. Philip: It is in the second binder. I had it this morning but there are only three or four of them.

Interjection: There is one for each caucus and they are available for your scrutiny.

Mr. Wigdor: They are probably contained in the volume with my materials at tab 25, if that is of assistance.

Mr. Philip: I had it here and I gave it back. Maybe it is here; is it?

Mr. Chairman: If the witness has a copy; do you have a copy?

Mr. Wildman: No, I do not have a copy. That is basically why I am asking.

Mr. Philip: Here it is here.

Mr. Wigdor: I will not hold things up.

Mr. Wildman: If you have a copy at least.

Mr. Wigdor: It is in the materials I have submitted. I can summarize it for you.

Mr. Wildman: Okay, that would be useful.

Mr. Wigdor: As I recall, the provision related to the eventuality that sales of Mazdamon in the future fell below a certain threshold or that the royalty entitlement of Datamatrix as a result of those sales fell below a certain threshold and Graham did not elect to pay up to the minimum quarterly royalty. In that event, depending upon when it occurred, Datamatrix had an option to reacquire the product rights for a sum of money. I think the initial price was \$500,000 and it would grow over time depending on when in the future the situation arose.

Mr. Wildman: I see.

Mr. Wigdor: It was not the situation that had arisen in September 1986.

Mr. Wildman: Were you also hoping to negotiate if that option had to be accepted by your company? Were you hoping to work out some kind of deal where you would get some sort of royalty as well, if the product reverted to Datamatrix?

Mr. Graham: Our hope was that there would be a royalty return to the shareholders, yes.

Mr. Wildman: I say this without prejudice. Did you have any kind of negotiations at any time that would look to the reacquiring of the product at some future date if this option were accepted by your company?

Mr. Graham: No. Do you mean for myself to reacquire it?

Mr. Wildman: Or for your company.

Mr. Graham: No.

Mr. Wildman: I must admit that I missed the significance of the difference between what you understood Mr. Ferraro's question to mean this morning and what you understood it to mean when he explained it subsequently, this afternoon, after we had received these documents.

Mr. Graham: I thought he was asking a similar question to the one you just posed, "Did you set up the sale so that you could step left of the issue and then initiate some kind of programmer deal that you would be able to take advantage of?" The answer to that is clearly and unequivocally no.

Mr. Wildman: But your testimony is in fact that one of the options you were looking at when looking for this infusion of needed capital was perhaps the most extreme option, not only the sale of a product or another asset but also in fact the sale of the whole company.

Mr. Graham: It would have to be considered, yes.

Mr. Wildman: You stated that you informed Mr. Cutts of that in your September 25 letter. You also testified, though, that the import of your letter dated September 26 was that you were looking for ways to sell the Mazdamon product.

Mr. Graham: September 26 is Andy Skerlec's letter.

Mr. Wildman: Oh sorry, okay. But as vice-president of the company, he was representing Graham Software's position, was he not?

Mr. Graham: Yes, it could be said that was true.

Mr. Wigdor: Perhaps I could supplement that from my recollection of the one meeting I had with Mr. Arbus and Mr. Surty. Mr. Arbus is Mr. Surty's counsel. Mr. Winter and Mr. Goldfinger from ODC, and Mr. Graham and myself, I think were all the attendees. There was a discussion at that meeting in addition to the reversion of the product rights, of selling not the entire Graham group, but the parent company in particular in which was vested the tax

loss and which held certain assets used in marketing Mazdamon as part of this transaction. I think that is what is referred to in the letter you are asking about.

Mr. Wildman: Okay.

Mr. Wigdor: But clearly, a sale of 100 per cent of the shares involved all parties. ODC was the second largest shareholder.

1540

Mr. Wildman: The only other issue I want to deal with is not related directly to this. It relates, though, to Mr. Winter's role. Looking at the statement you made that you submitted to the committee, I see on pages 4 and 5, and you referred to it subsequently, that Mr. Winter's role in that was to "veto an employee share purchase program approved by IDEA prior to the change in its management." Did Mr. Winter explain ODC's position as to why they would be opposed to this kind of employee share purchase program to try to bring more capital into the company?

Mr. Graham: It was basically explained to us at the meeting that there were really no clear directions as to what his responsibility was. There was no allocation for capital and for investment. I do not know; it was more like a visit than a board meeting.

Mr. Wildman: He was just trying to familiarize himself with the situation? Is that how you would characterize it?

Mr. Graham: We had presented a position stating where the company was and where we were going. At the end of that portion, we turned to Mr. Winter and said, "Now, how can we work together to resolve this situation?" He said: "My instructions are extremely limited to do that. I do not know what we can do about it. It was normally provided." In subsequent conversations afterwards, he explained to me when I asked him on several occasions, "How are you supposed to run a venture portfolio with no venture capital?" The answer repeatedly had been, "There would be none provided." At the meeting, we asked for the change in the shareholders' agreement and he said no, he was not in a position to approve that.

Mr. Wigdor: If I might, in fairness to Mr. Winter, I am not sure Mr. Graham understands certain of the nuances of what was proposed to be done. The shareholders' agreement negotiated with IDEA and Blake Cassels provided a rigorous framework within which the company was being managed and the government's interests were to be protected. It did not contemplate the introduction of several dozen additional shareholders. It was not structured as an agreement that would really be appropriate if there were several dozen shareholders.

The employee share plan had been approved in principle prior to the transition. At the meeting where it was vetoed, Mr. Winter indicated at least to me--perhaps you were not in the room--that he did not feel it was appropriate to restructure the shareholders' agreement in the manner I had drafted because of the reductions in control and protections that would result vis-à-vis IDEA.

Mr. Wildman: In other words, IDEA or ODC's share would thus be made smaller in terms of the total shareholdings.

Mr. Wigdor: No. The objection was not to the dilution of its share interest, as I understood it. The concern was the changes to the shareholders' agreement would reduce what Mr. Winter viewed as protections for his organization.

Mr. Wildman: Did he give any indication that ODC would consider--was this an outright veto or was there any indication that at some future date ODC might consider other types of options the company might pursue in terms of increasing the number of investors in the company?

Mr. Wigdor: I myself perceived it as an outright veto, but it paled in significance to the other matters discussed at the meeting. Perhaps had we revisited it, some compromise might have been possible.

Mr. Chairman: How much money were you contemplating that would have been generated for the company?

Mr. Graham: It was difficult to understand it. The employees were at various stages of financial liabilities and so on and I do not think \$300,000 or \$400,000 would be out of the question.

Mr. Wildman: Okay. Just one other question, and that refers to the statement at the bottom of page 5 where you quote Mr. Winter in a statement to you, Mr. Graham, and to Mr. Wigdor. I am not sure whether you are saying this is a direct quote or whether it is basically a rendering of what he said in some other words.

"It would be best, from the provincial government's point of view, if Graham Software Corp. went quietly bankrupt." Then you go on to characterize that, what you see as ODC's insidious role in this whole thing.

Is that a direct quote from Mr. Winter? Did he in fact say the government would prefer to see Graham Software go quietly bankrupt?

Mr. Graham: Yes.

Mr. Wildman: Obviously, if that is the statement he made, it is not in context because we do not know what else was said at the time, but did Mr. Winter in any way expand on that to say what his reason was for saying it or who, if anyone, had given him that impression?

Mr. Graham: I can only relate to you the feeling I was left with, if that will suffice. At the time, Graham Software was under a lot of pressure in the papers, and I was left with the impression that it did not matter. There was going to be no more support for Graham Software; it was a hot potato or whatever you want to call it. It just seemed like as soon as the ODC became involved with the issue, it was a close-out, if I am not mistaken. Maybe it is paranoia; I do not know. It certainly seemed to relate to GSC, but now, having heard from other investees, there seems to be a repetition of that purpose.

I cannot submit that as any kind of evidence, because it was only told to me, but the whole approach, one would think, if it was along the lines of a venture entity, you would send in venture people to work on your largest investment, to work with the management, to establish what it is, what are the requirements specifically and to work together to go forward. That has just never been done. It was never approached. I think we were washed out on day one.

Mr. Wildman: When ODC took over the IDEA portfolio, did you subsequently have contact with the people who had worked for IDEA and were working on a consultative basis with ODC in management of the former IDEA portfolio, such as Mr. Cannon?

Mr. Graham: At what period?

Mr. Wildman: When IDEA was ended and ODC took over its portfolio, there was a period of time, as I understand it, during which certain former principals of IDEA worked with ODC on a consultative basis in managing the former IDEA portfolio. One of those people was Mr. Cannon.

Mr. Graham: I am not sure I know what you mean. Do you mean when ODC came on the scene or during the transition period? Could you give me the dates of what started when?

Mr. Wildman: I see what you mean. I guess it was during the transition period then, July 1986; in that period of time. Subsequent to June.

Mr. Graham: Absolutely. Was there contact with IDEA during that period prior to receiving any direct reference on it?

Mr. Wildman: It is prior to these letters dated in August and September.

Mr. Graham: Yes.

Mr. Wildman: So you did have further contact with them. Did they give you any impression, for instance, did Mr. Cannon give you any impression that they were involved in a close-out operation?

Mr. Graham: In a--

Mr. Wildman: In a shutdown of those portfolio operations?

1550

Mr. Graham: No. The impression that I had from those conversations was that the portfolio would be transferred to a private sector group of professional managers, and that would be fine. As well as that, I was negotiating with other groups which would have the possibility of coming into the investment. No, I was not under the impression that it was going to be a--we were shocked when the situation blew up in the House. Almost instantaneously we were informed that the Ontario Development Corp. was now managing it and that was a shock, at the very least.

Mr. Chairman: I have a couple of quick questions. In your statement you talked about a solution being identified to relieve the working capital shortfall, and that was a public offering of your securities. How far did that get along? Had you discussed that with the ministry or with ODC officials?

Mr. Graham: Yes, we had.

Mr. Chairman: Can you bring us up to speed on that?

Mr. Graham: Well, the exact timing is difficult. We discussed the issue. I guess the main objection that was put forward by Mr. Winter was that ODC or the government felt that if it was a participant--that is, a

shareholder--in a publicly traded company, that could be used as ammunition to fuel an offering, and it did not feel that it should be put in that position.

Mr. Chairman: Is there any precedent that you are aware of?

Mr. Graham: Of people who have done it with the government or with ODC?

Mr. Chairman: Yes.

Mr. Graham: I believe that there are. Telepanel is a company now on the Vancouver Exchange, and ODC is a shareholder now--I do not know; it might have been purchased.

I found the comment kind of strange in two areas. One was that there was certainly an objection to that approach, the reasoning being that ODC's participation in it would fuel the sale of shares, but that is what I thought we were trying to do: fuel the sale of shares. By the way, I do not agree that the government having shares in a corporation would be a marvellous marketing tool to a brokerage house. As a matter of fact, it could be just the opposite. Here again, it is a question of the objective. The objective is working capital.

Mr. Chairman: At what kind of value were you going to place the shares in the market?

Mr. Graham: I think we valued the company at \$5 million or \$6 million. We had a fellow by the name of Rex McCafferty, a consultant, working with us doing the valuations.

Mr. Chairman: So you were looking to raise \$5 million to \$6 million. Was that your hope? Or were you setting highly speculative--

Mr. Graham: No. I think the valuation that was placed on the company was around \$5 million or \$6 million. I think what we were hoping to raise was around \$900,000.

Mr. Wigdor: It was a two-stage transaction, if I could supplement that. I was not involved in all of the early negotiations, but when the time came to be negotiating the actual contracts--because it did get that far--I was certainly involved. As Mr. Graham indicated, Mr. McCafferty was the public markets expert who was putting the deal together. He put us in touch with a gentleman--whose name I do not recall at the moment, but if anything turns on it, I certainly have it on file--who had a clean public shell, which is a typical target deal for doing a reverse takeover into a public company.

We negotiated a transaction in which the shares of Graham Software Corp. would be exchanged for the shares of this public company and the existing shares of the public company would be retained by the fellow who owned it at that time. In exchange for his acquiring a percentage or shares in a new vehicle that included Graham Software, he was to inject additional moneys through a private placement under the rules of the Ontario Securities Commission and the Securities Act in an amount of--my recollection is the same as yours--\$900,000.

Having completed that, having used that capital to restore the company to some semblance of a sound fiscal position, only then would a public offering of securities take place. The amount of that public offering was

discussed in my presence only in general terms as being in the millions of dollars. There was no share price discussed; there was no definitive amount discussed. The immediate transaction that went to the stage of having draft contracts prepared was an exchange of shares and the injection by way of private placement of \$900,000.

One of the stumbling blocks was that the Ontario Development Corp. indicated it was not prepared to exchange its shares in Graham Software for shares in the public company. There were other factors involved in keeping this deal together, but that certainly was one of the factors in its falling apart.

Subsequently there was a second transaction that Mr. McCafferty tried with a different group, which aborted when Minister O'Neil made a statement in the House in October.

Mr. Chairman: I am going to get into that. Was there a downside in this thing for ODC, other than the public perception that Mr. Winter expressed?

Mr. Wigdor: There was a dilution involved. All shareholders would have been diluted equally, but there was a dilution.

Mr. Chairman: Looking at the bottom line now and at what has transpired, was it a worst-case scenario for ODC? If ODC had concurred with this, you would still have ended up in similar straits.

Mr. Wawrew: If we had got the injection of the \$900,000, we would be in business today. The Canadian technology still would be in Canada. We, not a United States firm, would be distributing it worldwide, and the true value of that product would be realized.

Mr. Wigdor: However, reverse takeovers are viewed as a back door into the public marketplace, without benefit of filing a prospectus and the like. There were certain potential embarrassments appropriate to the process.

Mr. Chairman: It was not an appropriate thing for a government agency to be involved with.

Mr. Wigdor: That is my perception of where the concerns came from.

Mr. Chairman: You were talking about Mr. O'Neil's announcement during this period, which sort of--not "sort of"--effectively killed any possibility of taking that route. He was saying you were going to be wound down and go into receivership.

Mr. Wawrer: I think he actually said we were bankrupt.

Mr. Chairman: Was there any dialogue between ODC, the ministry and yourselves before this statement was made?

Mr. Graham: That would have given us any indication that we were going to be wound down?

Mr. Chairman: Yes.

Mr. Graham: No. There is one thing I could add to that. When the professional acquisition group from UCCEL came down, I looked at one of the representative's folders. He had the clip. He said, "I guess we know what state you fellows are in."

Mr. Chairman: Did you ever have any explanation from ODC officials of the rationale behind making a statement like that?

Mr. Graham: I certainly did not.

Mr. Ferraro: What statement was that?

Mr. Chairman: That the company was going into receivership.

Mr. Ferraro: Can you show me where he said that?

Mr. Chairman: I cannot.

Mr. Ferraro: I am not doubting you, but you are making a lot out of it. I would just like to see it.

Mr. Chairman: It is part of Mr. Graham's statement.

Mr. Wigdor: I think it is in Hansard, as well. I have seen it in the last day or so.

Mr. Ferraro: It very well may be, but I certainly have not seen it.

Mr. Gillies: By way of supplementary, your contention is that the minister's statement to the House was inaccurate.

Mr. Wigdor: The minister tried to make it come true. Within a day or two, Blake, Cassels and Graydon had drafted the documentation to cause the company to make a voluntary--was this an assignment? I think they discussed an assignment in bankruptcy, but ultimately it was a court-supervised liquidation under the Business Corporations Act.

Mr. Ferraro: It sounds to me as if your problems started when Mr. Gillies made allegations that have been proven unfounded.

Mr. Wigdor: There is a certain amount of truth to that as well.

Mr. Ferraro: Thank you.

Mr. Gillies: It remains to be seen whether they are unfounded. They are proven unfounded to Mr. Ferraro's satisfaction.

Mr. Ferraro: If I am out to lunch, you are out on a picnic.

Mr. Gillies: It remains to be seen whether they are unfounded.

Mr. Chairman: In any event, since the chairman has the floor, I will have to call you all to order.

You have described that as the final nail in the coffin. It was impossible for you to recover after the minister made a statement in the House that you were out of business.

1600

Mr. Graham: We kept persisting, we kept trying. In the end we were fortunate enough that the IDEA board approved the purchase of Mazdamon.

Mr. Philip: Were you referring to his statement of October 14?

Mr. Graham: There are two of them. I have a press file. We kept a press file but we would need a weight-lifter to be the secretary to handle it. If you like, I can get both of those clippings.

Mr. Chairman: We should have them. Mr. Philip is the next questioner but, in rotation, I should give one of the other parties an opportunity. If no one else has a question, I will go to Mr. Philip.

Mr. Philip: Mr. Wigdor, I was quite honestly shocked when I thought I heard you tell me that you had never received document 29, which is the report of IDEA Corp. of February 11, 1987, by J. L. Biddell.

Mr. Wigdor: I received it yesterday morning from Mr. Arnott.

Mr. Philip: You received it from the committee; you did not receive it from Mr. Biddell?

Mr. Wigdor: No, sir. I have had no communications of any kind at any time with Mr. Biddell.

Mr. Philip: I do not want you to comment on the validity of the contents, but would you agree that statements like the one on page 2, "....The administration of the program to achieve them was marked by lavish spending, few, if any, controls and inadequate monitoring by IDEA's staff," are pretty serious accusations? The whole paper is a pretty serious accusation, both against IDEA Corp. and against the operations of Wyda. Would you not say that was a fair statement?

Mr. Wigdor: There certainly have been serious allegations made. I do not see the passage you read.

Mr. Philip: It is from the second page of tab 29.

Mr. D. W. Smith: Is it the first whole paragraph of page 8 that you are referring to?

Mr. Philip: It is headed page 8 but it is the second page under tab 29, I am sorry.

Mr. Wigdor: "The objectives were legitimate but the administration of the program"--Is this the IDEA program or the Graham Software program?

Mr. Philip: They are talking about Graham Software in the first sentence, so I am assuming that they are talking about Graham Software in the second sentence.

Mr. Wildman: It appears that they are talking about Graham Software.

Mr. Wigdor: The lavish spending is a matter of opinion.

Mr. Philip: I am not asking you as to the validity of the statement. I am saying would you agree that this document is a pretty serious accusation against both IDEA and Graham, whether you agree with the contents or not?

Mr. Wigdor: I agree that it is a serious allegation.

Mr. Philip: Are you saying that at no time were these accusations provided to you as the solicitor, or indeed to Mr. Graham, to respond to these accusations?

Mr. Wigdor: They certainly were not provided to me. Mr. Graham has advised me that they were not provided to him.

Mr. Philip: I will read subsection 5(2) of the Public Inquiries Act to you and then hand it to you: "No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel."

Mr. Wigdor: With respect, that was exactly my point and my comment about seeing this in print.

Mr. Philip: Then you are saying that at no time did Mr. Biddell, who was supposedly conducting an independent public inquiry, give you an opportunity, nor did he meet with you, to allow you to respond to these accusations that are made in this document.

Mr. Wigdor: That is certainly correct in my case.

Mr. Wildmen: Is that true also of Mr. Graham?

Mr. Wigdor: I was just turning to Mr. Graham to get him to confirm, and Mr. Wawrew as well.

Mr. Philip: I want to supply you with a copy of Hansard for October 14, in which the minister announces the inquiry. I want to read the section. He says:

"Questions have been raised about IDEA's investment in a company called Graham Software. The first IDEA investment in this company was made on September 18, 1985, and rose to \$5 million in March 1986. The company is currently winding up its affairs and ODC does not expect much, if any, recovery from the investment.

"To address these and other concerns regarding IDEA investments, I have asked Jack Biddell to initiate a thorough and complete review of the entire IDEA portfolio. As many members are aware, Mr. Biddell is the past chairman of the Ontario Inflation Restraint Board and a retired partner with the accounting firm of Clarkson Gordon.

"Mr. Biddell's review will: (1) identify any current or past problems in the IDEA portfolio as it was turned over to the ODC on June 30, 1986; (2) provide a full review of all existing investments to determine whether there is sufficient chance of future benefit to warrant continued support; (3) identify current investments requiring additional financial and other support; and (4) assist in the development of a strategy for the disposition of the remaining IDEA assets.

"I have indicated to Mr. Biddell that his report should be completed as quickly as possible."

I am asking you, I suppose, for a legal opinion, your legal opinion. I may get another legal opinion that is quite different from yours. Do you feel

that statement, and you may want to read the whole thing in context, was in fact a public inquiry as covered under the act I have just handed to you?

Mr. Wigdor: I prefer not to give legal advice to this committee or to you in particular. Given my legal training, and as a citizen of this country, I certainly feel it is a denial of fundamental justice for an independent inquiry to be conducted without all parties having an opportunity to be heard. This is not an inquiry under the Public Inquiries Act. I am not particularly familiar with the Public Inquiries Act but I imagine that it would have no application.

What about the Statutory Powers Procedure Act or the Judicial Review Procedure Act? Under all statutes in Canada and Ontario that I was introduced to in law school, where someone is carrying out an official or quasi-official fact-finding mission, making a determination of the propriety of conduct, making any determination affecting someone's rights, any party undertaking such a function has an obligation to allow all parties to be heard.

As I said earlier, I was absolutely astounded to see Mr. Biddell's report excerpted in these materials. I have been expecting and, frankly, even scheduling time to appear before him. I do not wish to express an opinion upon whether in law subsection 5(2) of the Public Inquiries Act has been breached by Mr. Biddell. Certainly, I feel that if he has indeed reported, as he appears to have, on Graham Software Corp., there has been a denial of fundamental justice, and, frankly, it is not inconsistent with the way Ontario Development Corp. has conducted itself in this matter in the past nine months. At some point, I expect this committee is going to turn to an examination of that conduct. After all, that is why this committee commenced this inquiry in the first place.

Mr. Epp: I do not think it is Mr. Wigdor's position to lecture this committee on what its function is. He knows that Graham Software is before this committee and it is not for him to set our agenda for us.

Mr. Chairman: I do not think any members interpreted that as a lecture on what we are supposed to be doing.

1610

Mr. Wigdor: Mr. Chairman, I apologize if I have overstepped the bounds of my proper position here. I feel emotionally involved. That is why I am appearing as a witness and not as counsel. I apologize to the gentleman before me and to all members of the committee if I have overstepped the bounds.

Mr. Gillies: Speaking as one member of the committee, I do not think Mr. Wigdor owes the committee any apology whatsoever. I further believe he has every right in giving his testimony to respond to the very serious charges that have been made--some of us may think improperly--in the document to which he is referring. I took no offence whatsoever at his remarks.

Mr. Philip: What irritates and upsets me with this is that I think it is basically the same principle I was objecting to this morning and you correctly pointed out--at least I am trying to be consistent--namely, that there seems to me to be a violation of due process. You do not make accusations against somebody, if you are conducting an inquiry, without giving that person an opportunity to respond. What I hear you saying is that if this

was a public inquiry--we may have to ask Mr. Biddell if he saw himself or the minister--

Mr. Ferraro: It was not.

Mr. Philip: If it was a public inquiry under the Public Inquiries Act, then there is a violation of that section. There certainly, at the very least, seems to be a violation of due process. How do you make an accusation that is provided to one party without having the other party that is accused given an opportunity to respond? I am frankly quite shocked at this.

Mr. Ferraro: Can I speak to that?

Mr. Chairman: To what?

Mr. Ferraro: To what Mr. Philip alluded to.

Mr. Chairman: I am sorry. I was wrapped up in a conversation with the clerk and I did not hear the gist of what he was saying. Is it a question?

Mr. Ferraro: No.

Mr. Wildman: No, it was a statement.

Mr. Philip: It was a summation.

Mr. Chairman: All right, Mr. Ferraro, I will give you a minute to respond.

Mr. Ferraro: Mr. Philip's whole argument is based on the fact that he interprets it as a public inquiry. Quite frankly, the mandate of Mr. Biddell was to look at all of IDEA. There may be 200 or 300 companies in there. Opinion was rendered, I believe, by a very qualified individual in this province to the government, and surely, particularly Mr. Gillies and indeed all members of the committee realize that when reports are made to the government on the basis of finances and ethics, they are not always going to refer to, in this particular case the 200, if I may, corporations that are being investigated. I think they are reaching to some degree for some salvation as to some of the allegations made previously.

Mr. Chairman: You might have a point of order.

Mr. Gillies: Perhaps I may speak to it, Mr. Chairman.

Mr. Philip: I think he had a point of order and I would like to respond to it.

Mr. Chairman: We will let Mr. Gillies say his piece and then we will get back to you.

Mr. Gillies: I disagree entirely with Mr. Ferraro and I think the point Mr. Philip has made is absolutely correct. This inquiry by Mr. Biddell was represented to the Legislature as an impartial and full review of the IDEA portfolio, not as an internal inquiry, not as a sitting down at the administrative level with the ODC.

Mr. Epp: Not a public inquiry.

Mr. Gillies: If you do not mind, Mr. Epp, you always have an opportunity to make your remarks and you usually do.

It was not represented as an administrative, internal or let us sit down with ODC and straighten out this portfolio thing. After pressure was brought to bear on the House, the minister announced an inquiry to look into the whole problem, that the report would be made expediently, which it has not been, and that it would be made public. What we have here is a situation where this company is having a number of allegations made about it in the part of the report that we have obtained, and it would appear it was the intention of Mr. Biddell that this be made public, as was his mandate, with no opportunity whatsoever for input from the company involved.

Frankly, whether this is an inquiry under the Public Inquiries Act or not, I do not think this is what this exercise was represented to the Legislature as at all. If, in fact, as we suspected and as I indicated in the House the day Mr. O'Neil made his statement, this was to be nothing more than a whitewash, then that may be what we are getting because it does not appear that all the parties involved have been contacted about this.

Mr. Chairman: Order, please. I have been asked to make one point that may or may not be pertinent, that the portion of the Biddell report that appears in the materials before the committee appears there at the specific request of the Provincial Auditor to the Ontario Development Corp. Mr. Archer or a member of his staff may want to comment on that at this point before we proceed. Mr. Archer, do you have anything you would like to say?

Mr. Archer: I can just reiterate what you said. It was at our request that the ODC made available its copy of the Biddell report. We were interested just in the comments relative to Graham because we thought they would be relevant to this committee. We asked the ODC whether it would have any objection to our reproducing the segment of the report pertinent to Graham Software and its advice was that it would have no objection at all.

I understand latterly that this viewpoint of theirs, that they would have no objection, was offered on the assumption that by the time our report became public the Biddell report would have been made public and that therefore we would not be prereleasing anything. That event did not transpire, so it has evolved that our report is the first public airing of any portion of the Biddell report.

Mr. Philip: On the auditor's comment, it seems to me that whether or not we obtained it and it was going to be made public is not relevant to the essential concern I raised. The essential concern is that the minister stands up in the House on October 14 and says he is going to have a report, which he says on page 2416 will be an inquiry that "will be made public."

I am not going to be legalistic about whether that is a public inquiry under the Public Inquiries Act, but in fact what has happened is that this report or parts of it have been provided to one of the parties and conclusions have been drawn without even asking one of the two parties accused in this case, namely, IDEA and Graham, without even interviewing them and without even, as we understand, giving them an opportunity to respond to the accusations before making this report.

Whether the report were made to us today, in two months' time or in two years' time, the issue is not that at all. The issue is whether due process was followed. I am astonished that something could make its way into a report

without at least being sent to Mr. Graham and his solicitors and earlier to Mr. Blakeley and IDEA Corp. to respond to the accusations.

Mr. Ferraro: You do that every day.

Mr. Philip: Not on a public inquiry.

Mr. Wildman: Nobody has ever accused him of carrying out an impartial inquiry.

Mr. Epp: I want to respond very quickly to the accusations made here with respect to the public inquiry. I think we have to differentiate between an inquiry that is an internal inquiry, the results of which will be made public, and a public inquiry held across the province, the country or wherever it is going to be, where you have hearings and people have a chance to respond. I think it is a very different kettle of fish and I think that is the distinction Mr. Philip and everybody else should make. We are talking here about an inquiry of certain facts regarding IDEA, Graham Software and all other kinds of companies, the findings of which would be made public, and not a public inquiry.

The second thing is that with respect to this document we have with regard to Mr. Biddell's comments, this has been made public prematurely. Mr. Biddell was not prepared to make this document public at this point. The auditor was able to obtain this document from ODC, and ODC, with its best intentions, permitted this to be made public, but I doubt very much that Mr. Biddell preferred to have it made public at this time before he had a chance to consult some other people on it. Therefore, I think Mr. Biddell is not getting the proper treatment from this committee that he should.

Mr. Gillies: That is a very serious charge you are making. Who is at fault for making this document public, by your account against Mr. Biddell's wishes?

Mr. Epp: I think the circumstances, Mr. Gillies--you interrupted me; you always mention it when I do it, so I thought I might mention it when you are doing it--have led to the premature release of this document. I do not think Mr. Biddell should be criticized for not consulting with some of the partners or some of the people who were involved in this inquiry, because the document was prematurely released. I think it is an unfortunate circumstance, and I say it should be dealt with on that basis.

Mr. Wildman: I have a question of Mr. Archer. Is it your understanding that this document, of which we have a portion from the Ontario Development Corp., was a final draft of Mr. Biddell's report?

Mr. Archer: Can you answer that?

Mr. Mishchenko: Our understanding is that it is the final report by Mr. Biddell.

Mr. Wildman: I submit, Mr. Epp, that the statement you have made is irrelevant, frankly, because if this is the final report--

Mr. Epp: It is not the complete report.

Mr. Wildman: Oh, all right.

Mr. Mishchenko: It is only a portion of it.

Mr. Wildman: This is a portion of the final report. Then we are to understand that Mr. Biddell has completed his work, as far as you understand it.

Mr. Mishchenko: Correct.

Mr. Wildman: Then Mr. Biddell has completed his work. I say that makes your comments irrelevant, because if he has completed his work, he is not going to start suddenly consulting with people about whom he has made comments in his report.

Mr. Philip: These are conclusions.

Mr. Wildman: To argue that, I think, is silly. In fact, Mr. Biddell carried out an inquiry. Whether it was under the Public Inquiries Act or not I do not think really matters, because the question is not what he is by law required to do, but rather what is fair. I have found this whole process this afternoon hardly enlightening. It seems to me what has happened in this whole process is that everybody involved is trying to cover his behind. In fact, the whole process has been a process not of trying to bring out information but in some way to avoid doing that. I think that is unfortunate.

Mr. Chairman: Mr. Ferraro?

Mr. Ferraro: That is okay.

Mr. Chairman: Are there any further questions of the witnesses?
Thank you very much, gentlemen.

Mr. Graham: Can I ask a question regarding this issue?

Mr. Chairman: Go ahead.

Mr. Graham: One of the things I would like clarified--I do not have much of an understanding--is that there seems to be some conversation about Mr. Biddell's role. The impression I have, not having met the gentleman but only having seen him officed in a corner, was that what Mr. Biddell did was an honest evaluation of the situation, or was he on site to coach ODC staff through the negotiations?

Mr. Epp: That is not fair.

Mr. Chairman: This whole matter that has arisen this afternoon--

Mr. Epp: It is very unfair, unfortunately.

Mr. Chairman: --is something I am sure certain members of the committee will want to pursue further with ODC officials and perhaps with Mr. Biddell himself.

Mr. Wildman: Yes. With respect, I think we should ask ODC to come back before us, and also Mr. Biddell.

Mr. Chairman: ODC has not appeared before us for questioning yet.
Thank you very much, gentlemen.

What is the wish of the committee? Do you wish to begin questioning ODC, or would you rather call it a day and start with the Ontario Development Corp. at 10 o'clock? All right. We will adjourn.

The committee adjourned at 4:24 p.m.

CA 20N
XC 21
-P 73

P-64

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

WEDNESDAY, MARCH 25, 1987

Morning Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Barlow, W. W. (Cambridge PC)
Davis, W. C. (Scarborough Centre PC)
Epp, H. A. (Waterloo North L)
Philip, E. T. (Etobicoke NDP)
Pope, A. W. (Cochrane South PC)
Sargent, E. C. (Grey-Bruce L)
Smith, D. W. (Lambton L)
South, L. (Frontenac-Addington L)
Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South
Gregory, M. E. C. (Mississauga East PC) for Mr. Davis
Hennessy, M. (Fort William PC) for Mr. Pope
McLean, A. K. (Simcoe East PC) for Mr. Runciman

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

Blakley, H., Former President, IDEA Corp.

From the Ontario Development Corp.:

MacKinnon, D., President and Chief Executive Officer
Winter, R., Director, Special Financial Services
Cass, B., Director, Legal Services Branch

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Wednesday, March 25, 1987

The committee met at 10:12 a.m. in room 151.

GRAHAM SOFTWARE CORP.
(continued)

The Vice-Chairman: The chairman will not be present today so I will be in the chair. My understanding is that the first order of business this morning will be to question Mr. Blakley, Mr. Douglas and Mr. Maruzzo again. They were invited back for 10 a.m. When you have finished your discussions with them, we will have the Ontario Development Corp. officials before us, and, at 2 o'clock this afternoon, Michael St. Amant from the Ministry of Industry, Trade and Technology has been invited to appear. Subsequent to him, at 3:45 p.m. Peter Barnes has been asked to come in. Because of the short notice, Mr. Barnes apparently is available for only half an hour or so, but he will be here. The clerk informs me that Thursday at 10 a.m., again subject to confirmation, Geoff Cannon is available to come before the committee.

Are there any questions about the schedule? Mr. Philip?

Mr. Philip: I want to start asking Mr. Blakley if we could.

The Vice-Chairman: If Mr. Blakley and his colleagues will come forward, I will start a list and Mr. Philip you are up first.

IDEA CORP.

Mr. Philip: Mr. Blakley, one of the things that I have been very concerned about, and indeed other members of this committee have been concerned about, is the apparent way in which the present government gives golden or platinum handshakes to certain people who have been in the public service. Can you tell us what kind of termination settlement you obtained and under what circumstances?

Mr. Blakley: I was quickly given, in summary, one year's separation.

Mr. Philip: One year's separation? Which would be roughly \$130,000?

Mr. Blakley: Including benefits, yes. It was a basic \$110,000.

Mr. Philip: You say it is a one for one. You were basically in your past position for one year.

Mr. Blakley: From April 15 or 16 until June 30. It would be a year and three months, roughly.

Mr. Philip: So for a year and three months, you got one year's salary at termination.

Mr. Blakley: Right.

Mr. Philip: Can you tell us the circumstances under which that was

arranged? How did it come down the line? Did you refuse to leave and then they upped it? Did you negotiate? What was the process?

Mr. Blakley: I negotiated it. I had legal representation from--I have forgotten the name of the law firm. It is well known. It was discussed with the legal counsel for Mr. Kruger from the Ministry of the Attorney General. It was a friendly discussion back and forth. There were no threats on my part, as might have been stated in some newspapers. I simply expressed that under the circumstances under which I had taken the position, I was prepared to stay with the organization until my normal retirement age of 65.

I did not ask for a contract. I guess I could have had one. I understand my predecessor had one. I never worked on a contractual basis in the past. I have had similar situations in my previous business career. I know of many instances where similar settlements are normal in the private sector. It was a mutually agreed upon amount, under the circumstances.

Mr. Philip: Would your legal counsel not have advised you that one of the major variables that is considered in a termination settlement is the effect the termination would have on one's future career? You are a gentleman who has held important posts at Carling O'Keefe Breweries, among others, so no one can suggest that you were not an important person when you came. I am not disputing that and that also is one of the considerations. However, at age 63, one might surmise that there was not a very long future professional career for you. Most people retire at age 65.

Mr. Blakley: Right.

Mr. Philip: Why was it so large a settlement, considering that in addition to receiving the one year's severance, you would also have received some pension benefits as well?

Mr. Blakley: I think the pension benefits accumulated to \$3,000.

Mr. Philip: Is that all?

Mr. Blakley: That is all. That was paid to me and was part of the settlement. I had no special pension arrangements.

Mr. Philip: Were there any other employees of IDEA who received equally large settlements? What happened with the other key executive officers?

Mr. Blakley: The two vice-presidents were there on a month-to-month contract basis anyway, so they were not entitled to and did not ask for any separation. Those were the two officers. As far as other senior people were concerned, I do not know what they got because they negotiated their settlements individually, separately and privately with Mr. Kruger's office.

Mr. Philip: One of the interesting things that seems to be true of Mr. Kruger's office in negotiating various kinds of contracts was that part of the deal was that you got a fairly good settlement at the taxpayer's expense; in exchange, you would sign a secrecy contract. Did you sign a contract or a document that said you would not reveal the amount of your settlement to the press or to anyone?

Mr. Blakley: That is right; I did.

Mr. Philip: Who initiated that? Was it Mr. Kruger who asked you for that?

Mr. Blakley: I do not know whether it was Mr. Kruger or his legal representative from the Attorney General's office, but it was given to me by my legal counsel to sign. Where it came from I do not know.

1020

Mr. Epp: The fact that you would not have a press conference or go to the press and tell what you were getting and so forth is not uncommon in the industry, is it?

Mr. Blakley: No.

Mr. Philip: But you in fact did sign a memorandum or a contract that you would not reveal the information about your settlement.

Mr. Blakley: That I would not discuss the settlement with anyone.

Mr. Philip: Did you not feel it kind of unusual, considering you were a public servant then earning public funds, that Mr. Kruger or his attorneys or whoever ordered Mr. Kruger and his attorneys to act on their behalf, would want you to sign a contract that essentially was a coverup of the public moneys being spent?

Mr. Blakley: I did not consider it a coverup. As Mr. Epp has said, it is not uncommon in business to ask a person receiving a settlement not to reveal it because it may affect settlements with other people. Certainly, I was happy to sign it, for the simple reason that I had no intention or desire to get into the press. I dislike it even more today after what I have seen this week. At the time I signed it, however, I said to myself, "I am working for a crown corporation and all such documents eventually become public information." I did not comment on it; I just wondered about it. But it is not uncommon and I had no hesitancy in signing it.

Mr. Philip: Would you not agree, though, that there is a qualitative difference in working for what is essentially, directly or indirectly, the taxpayer, namely, in your case, a crown corporation? It comes out of the taxpayer's pocket one way or the other, either by fewer profits or more deficits. To sign an agreement--

The Vice-Chairman: Mr. Philip, I would just like to remind you the matter before the committee is the Graham Software review and I wonder whether you could tie your questioning back to the specific matter of business before us.

Mr. Philip: The matter that of course has been continually before us in the standing committee on public accounts has been these golden handshakes. But on top of that we are interested in what happened in the transition between IDEA Corp. and the holding company that took over all these companies and eventually the total cost to the taxpayers. Whether it is ODC, IDEA or that transition, I think, is relevant. You just said it was an amicable discussion, but if I am not mistaken, in the auditor's report there was a mention that you threatened to sue if you did not get a fairly good settlement. Is that factual?

Mr. Blakley: No, that is not true. I think that just retaining a

lawyer implies that ultimately, if you do not get what you want. I suppose that is always implied, but there was no threat made by me at all. I had several discussions of the matter with Mr. Kruger and they were amicable. There were no threats on either side.

The Vice-Chairman: There are no other questioners on the list at the moment, so I would like to ask one or two. At the time of the pending wind-down of IDEA, my understanding is that, perhaps before the decision was made that ODC would be taking over the portfolio, a number of other groups and individuals were putting forward proposals to try to get control of the portfolio. To the best of your knowledge, is that the case?

Mr. Blakley: Yes, I was one of them. That was given in evidence in the Wyda hearing.

The Vice-Chairman: Yes. Is it the case that Mr. Cannon and Mr. Logan put together a proposal too?

Mr. Blakley: That is my understanding, but I do not know for sure. I never knew the nature of it. It was not in conjunction with me.

The Vice-Chairman: The other bidder I have heard, I do not know whether you know of this or not, was Massey-Ferguson Ltd.

Mr. Blakley: I heard that also, but I do not know.

The Vice-Chairman: Would it be fair to say that there were other proposals floating around? Was there a fair amount of interest in getting hold of this portfolio?

Mr. Blakley: I heard there were as many as eight or ten.

The Vice-Chairman: Eight or ten. Were any discussions held with you or your officials by government officials as to the worth of these proposals and in fact was your advice sought on where the portfolio should go?

Mr. Blakley: No. I had a number of calls from people apparently interested in taking over the management of the portfolio in some form or other, wanting to get information from me as the president of IDEA as to their worth but I never discussed that with anybody.

The Vice-Chairman: These prospective bidders were dealing with whom? Do you know? They were putting their submissions forward to the minister?

Mr. Blakley: Certainly in some cases, Mr. Kruger. I heard also that they made applications to ODC but I am not sure who at ODC. I am not even sure whether that is accurate.

The Vice-Chairman: Because Mr. Kruger was the man in large part determining the fate of crown corporations, people were submitting their proposals to him.

Mr. Blakley: That is right.

The Vice-Chairman: Mr. Kruger did not ask your opinion or your officials' opinion about the future of the portfolio?

Mr. Blakley: No.

The Vice-Chairman: Thank you for the moment, gentlemen. We will allow you to step down and ask the ODC officials to come forward.

ONTARIO DEVELOPMENT CORP.

Mr. Philip: I wonder whether each of you can give us your understanding of the minister's statement in the House in which he said that there would be an inquiry and then said that the information would be made public by Jack Biddell, a former partner of Woods Gordon. Did you understand that to be the type of inquiry that would be covered by the Public Inquiries Act?

Mr. MacKinnon: My understanding at the time was that the word "review" was used in the announcement and that it would not be an inquiry under the Public Inquiries Act. I had a hunch too that this review was a review designed to provide the government with strategic advice on the management of the portfolio as well as any other questions. For that reason, fairly full communication of information from us to Mr. Biddell would be important so that he could satisfactorily discharge that mandate.

Mr. Philip: You leave me at a disadvantage. I wonder whether you can explain to us anything in the minister's statement that would lead you to believe the inquiry was in fact analagous perhaps to buying a management consulting contract that would help you with the management of your portfolio?

Mr. MacKinnon: There were four terms of reference. I do not have the document immediately available, but at the very back of the announcement there were four items that included, amongst other things, advice to the government on the management of the portfolio and on the proper strategy to apply to certain specific transactions connected with it. Therefore, it is very clear from the four items on the back page of the document--I am recalling from several months ago--that transactional and strategic advice on the conduct of the portfolio was sought.

1030

Mr. Philip: You are aware of the document--you are obviously aware since you provided it to us--tab 29, a report on IDEA Corp. dated February 11, 1987, by J. L. Biddell. Did it surprise you yesterday when we found out that decisions were made and conclusions drawn without even talking to the principals of Graham Software?

Mr. MacKinnon: Mr. Philip, I want to correct your assumptions in two respects, if I may. The first was that I supplied the committee with the report, which I of course did not. I provided the report to the Provincial Auditor at his specific request. That is how the report got into the public domain. It is my view that when the Provincial Auditor asks me for a report, it is my responsibility to provide it. I also had a letter from the committee requiring me to deliver to the committee all the persons, papers or things in my possession, and I did so. I was not surprised. We responded to an explicit request of the Provincial Auditor in the way in which we are normally supposed to.

Mr. Philip: I am afraid you did not get the gist of my question. I know you are not surprised that we have the document because you supplied it to us. Were you surprised that Mr. Biddell would supply you with a report that

comes to very specific conclusions about this company without having even interviewed the principals of that company, as we understand it?

Mr. MacKinnon: I was going to come to that point. It is my view, and I have so testified before this committee, that our essential decision-making on our relationship with this firm was made before Mr. Biddell was appointed. You may recall--I am certain Mr. Gillies will recall because it was in an exchange with him in an in-camera session--that I asked the committee to postpone this matter until such time as the legal case concerning it had been concluded. We did not comment at that time on the substance of the case at all. We merely asked that it be postponed, but during a discussion with Mr. Gillies, I indicated clearly to him at that time that, in my view, the essential decision-making on our relationship with this firm had been concluded in the first week of October and that was 95 per cent of the matter. I believe the testimony so far before this hearing supports that.

It is true that there have been protracted negotiations since that time over the disposition of the assets. It is also true that from time to time, we have sought a variety of advice from a variety of sources, including Mr. Biddell, on the specific technicalities of recovery from those assets, but I would come back that my answer, essentially, is that this matter was decided in terms of our relationship with the company long before Mr. Biddell was appointed. Therefore, the conclusions in the Biddell report were essentially irrelevant to the key question as to whether we continued any commercial relationship with this company.

Mr. Philip: Were your decisions concerning all other companies that were in that portfolio decided, essentially, before Mr. Biddell did his report?

Mr. MacKinnon: I think it is fair to say that most of the decisions concerning companies in that portfolio have yet to be made.

Mr. Philip: In the minister's statement, one of his objectives--you pointed out correctly that there were four parts to his objectives--was to provide a full review of all existing investments to determine whether there was sufficient chance for future benefit to warrant continued support.

If, as you say, you had made all the essential decisions concerning Mr. Graham's company, and if the term of reference then for Mr. Biddell was in fact to provide a review to determine whether there was a sufficient chance of future benefit to warrant further investment in that company and others, is there not a contradiction between the objectives of the minister--I mean, how do you do an investigation on something that has already been decided?

Mr. MacKinnon: There is no contradiction whatsoever. When we inherited this company--I will refer you back to my opening statement. Perhaps I could again read a description of the state of the company we inherited. Just excuse me one moment here while I thumb through and find the exact stage.

"At the time the IDEA investment in Graham came to the Ontario Development Corp....the company appeared to be virtually insolvent....Staff were about to be laid off. Software authors were becoming increasingly disenchanted....creditors of Graham soon began calling ODC looking for payment...."

Additionally, of course, we had a variety of records by a variety of sources for the observation that the company's records were in disarray. It is the real world of commerce. If you inherit a company in that state, you cannot

wait for six months, eight months or 10 months. You have to operate in a time frame consistent with what the situation warrants, and this was a company that had failed. Indeed, I believe the evidence will show that it failed before we even got it. I believe that will--

Mr. Philip: That notwithstanding, and perhaps that simply enhances my question, if you already knew the company was in such disarray, if you in fact had concluded there was nothing further that could be done other than the actions you eventually took, why would Mr. Biddell prepare a report on the minister's authority or the minister's instructions when the decisions had already been made in the first place?

Mr. MacKinnon: In fairness, Mr. Biddell's report was to examine the IDEA portfolio, and he would have been instructed to provide a report no matter what state of the decision-making with respect to the companies was--

Mr. Philip: But--

Mr. MacKinnon: No, if you would let me finish; I would appreciate it if I could answer the question.

Mr. Philip: Yes.

Mr. MacKinnon: The second reason that government--I mean, we are a crown agency managing a complicated and difficult problem. In my view, it would be entirely appropriate, and I had a clear sense this was one of the reasons the government asked Mr. Biddell to get involved, for the government to ask him for some judgement with respect to matters in which we had already operated. That way, it could get a sense of whether we were doing what we had been asked to do and how well we were doing it.

Mr. Philip: Okay. This document, then, that we have by Mr. Biddell is essentially a judgement on what you have already done rather than an investigation into Graham Software?

Mr. MacKinnon: With respect, that is not what I said. It serves a multiplicity of purposes, one of which could be to provide some independent sense of the decision we were making and how well we were making it. I was not privy to it, but if that purpose was included in the many purposes for which the government might have commissioned this report, then I think that is fair and reasonable.

Mr. Philip: If it were an "independent sense"; how do you have an independent sense without interviewing the principal people involved in the portfolio?

Mr. MacKinnon: I have no comment to make upon the review. I did not commission it. The government commissioned it. The minister commissioned it. They decided what was included and they decided when it would be reported. I have no comment to make. I am a senior civil servant in this situation and the government has its purposes and I do my best to ensure that they are fulfilled. I have no comment to make on Mr. Biddell's methodology.

Mr. Ferraro: Mr. Chairman, I can give my understanding of the government's position on that if Mr. Philip wants to hear it at this point.

Mr. Philip: I would like to finish my questioning and then you are

welcome to make your statements or do whatever you want to do in your 20 minutes.

Mr. Ferraro: I am just trying to be helpful.

The Vice-Chairman: You can raise a point of order.

Mr. Philip: I appreciate the chair's telling the members how to raise points of order, but if you want to run a course on parliamentary procedure, I suggest you not do it on the taxpayers' bill.

The Vice-Chairman: This is significant for two reasons. First, Mr. Ferraro has never taken my advice before.

Mr. Ferraro: And probably never will.

The Vice-Chairman: No. I was indicating to Mr. Ferraro how to do it and not when. Please continue, Mr. Philip.

Mr. Philip: I guess from where I am sitting then, one might build the following scenario: Wyda gets the government into deep trouble. The government starts to panic. They look around, see Graham Software and say, "Oh my God, we had better not have this happen further down the road." You come in with instructions then to look very closely at all the portfolios, but this one being the most expensive, you looked at it.

1040

Mr. MacKinnon: No, that was not the reason.

Mr. Philip: Biddell then comes in to rationalize your decisions. Would that not be one scenario one might take on this document?

Mr. MacKinnon: I am not going to speculate on scenarios. I can sit down and construct several scenarios myself.

From where I sat, the government appointed Mr. Biddell, whom we know, and Mr. Biddell has a reputation of great distinction. I can tell you, as somebody who knows Mr. Biddell, that he has been practising as a consultant and specialist for 30 years. I can assure you of one thing: Mr. Biddell is not going to be accommodating to anybody for reasons that do not make fundamental sense in any material way. He is his own man, a man of outstanding qualities and distinction. The last thing I, my colleagues or anybody would want to do, in any way, shape or form, is to say or do anything that would in any way alter that widespread judgement of him by all those who have worked with him.

Mr. Philip: You are also a person of distinction and ethical qualities as a longtime public servant. Do you not feel there is basically an unfairness, a lack of due process, in a report being written that makes certain conclusions without talking to the people being accused? As a longtime public servant, knowing the processes involved, do you not think there is something wrong with a system that hears one side and makes conclusions without having an opportunity for the other side even to respond, let alone present its point of view?

Mr. MacKinnon: I will just repeat that I am not going to speculate on Mr. Biddell's methodology. I know him. The whole business community in this

city, and indeed nationally, knows him.

In my view, what we were asked to do was to manage this portfolio and we did so. The essential decision-making on this case, for the committee, was completed before Mr. Biddell began his report. Therefore, if the issue is, what the Ontario Development Corp. did or did not do in relation to this investment, any of the transitional issues or any of the issues upon which testimony was raised by me, in my opening statement, and by others, then Mr. Biddell's report was completed after all the essential decision-making on those important points had been completed.

Mr. Philip: I can accept exactly what you said, that there are basically two issues before us right now. One is the issue of whether you made the right decisions, what criteria you used and so forth. The other is the issue of Mr. Biddell's document and whether Biddell is in fact a rationalization rather than a true inquiry into IDEA Corp.

Mr. MacKinnon: You know that a senior civil servant, as I am, cannot honestly be expected to speculate with a response to a question such as that.

Mr. Philip: I know, but you can accept also that I, as a member of the opposition, have an obligation to speculate.

Mr. Epp: Not necessarily.

Mr. MacKinnon: Let me make just one observation. Mr. Philip indicated that there were two issues before the committee. One was how we made our decisions and the other was the matter relating to this inquiry. I would like to indicate to the committee that I believe there are three issues. The third is by far and away the most important, and that is the subject of my opening statement, the conduct and management of this company.

Mr. Epp: Very quickly, when Mr. Biddell had the portfolio of IDEA to review as opposed to a public inquiry on this matter, how many different parts of that portfolio were there? Graham was only one small piece of a much larger portfolio he was looking at. Was that not the case?

Mr. MacKinnon: Yes, they are approximately big and small. There were approximately 60 investments in the portfolio at that time. In addition, there was one major syndication that was not typical of the usual sort of investment in business. We are still involved in the syndication on a reduced scale.

Mr. Epp: If he were to do a full review of this, it has been suggested he would have to make comments on each part and then have "an objective review" and speak to everybody. He would have to go out there and interview various people of 60 different corporations where IDEA had its fingers in the pot, so to speak. Is that correct?

Mr. MacKinnon: Mr. Biddell did have a very big task to perform. Perhaps as partial answer to that question, if I could go back, and the Provincial Auditor may have some views on this question, it is not at all uncommon for auditors to examine the files in conducting a review, particularly a financial review. Files are supposed to record in definitive form exactly what happens with respect to each transaction.

This is a partial answer to Mr. Philip's question, I suppose. If an auditor decides that the master file is located somewhere, for the purposes of a review as opposed to a full inquiry, it is my view he can look at that file

and fairly come to conclusions because the file is supposed to express all that has happened. I would perhaps defer to Mr. Archer on that one.

Mr. Epp: While we are speaking about it, maybe we can ask Mr. Archer to elaborate on it.

Mr. Archer: I could not express it any more succinctly and completely than Mr. MacKinnon. That is exactly how auditors operate. They do not make any declarations without having much evidence to support it. I would be very surprised if the comments by Mr. Biddell are not well documented in the files of IDEA Corp.

Mr. Epp: What you are saying, Mr. Archer, is that there is no reason not to believe that what Mr. Biddell indicated in his statement is very supported by the evidence he saw before him.

Mr. Archer: Certainly, from my standpoint, but I may be biased.

Mr. Wildman: Mr. Chairman, would it not be more appropriate to direct that question to Mr. Biddell?

Mr. Epp: Well, okay. I have some other questions.

The Vice-Chairman: I think an interesting point has been raised. There are questions being asked. First, I think Mr. MacKinnon has quite rightly pointed out that we have to be very cautious about the type of questions we ask a senior public servant and that we expect same to respond to. I would also put it before the committee for its consideration whether some of these questions should be directed to Mr. Biddell.

Mr. Wildman: That is exactly my point. It seems to me Mr. Archer, in his comments, can say what process a qualified auditor of integrity would follow, but I do not think it is appropriate for us to ask Mr. Archer to speculate further than that on what evidence might have been in the files Mr. Biddell reviewed. Surely we should be asking Mr. Biddell himself.

The Vice-Chairman: I will have Mr. Epp continue, with the caution to all members that we cannot really ask Mr. MacKinnon and his colleagues to comment on their knowledge of Mr. Biddell's report.

Mr. Wildman: Sure.

Mr. Epp: I think the public servants have done extremely well in trying to put forth the best position they can with the evidence that is before them.

Mr. MacKinnon, one of the accusations that has been made against the ODC is with regard to the vetoing, to use that word, of the employees' share purchase plan. I think that is what it was called. I do not think it was an employee profit plan but a purchase plan. You vetoed that without having a full discourse on the benefits and so forth to the company. I wonder whether you might want to give us some clarification about that.

Mr. MacKinnon: I am going to ask my colleague, Mr. Winter, to respond directly. Perhaps I can make one general observation. I believe most of the testimony provided to the committee over the course of the past couple of days in this particular respect, I believe nearly everything that was

stated, particularly by the Graham Software people, needs considerable elaboration by us. The fact base in particular needs to be brought forward.

To my mind, your question is a very important one. It is my view that much of the testimony of the Graham Software management was either incomplete or inaccurate. I will address those difficulties, but before we talk about that, I will ask Mr. Winter to explain that specific problem because it illustrates the difficulties we have had.

1050

Mr. Winter: When we took over the portfolio, in that first board meeting on July 31, it was immediately apparent that Graham Software was in deep financial trouble. At that point, it had something like \$80,000 in cash.

Mr. Epp: That is the first board meeting you attended as the representative of the Ontario Development Corp., replacing Mr. Douglas.

Mr. Winter: Yes, that is right.

Mr. Epp: I just wanted to get that in the proper context.

Mr. Winter: At that point, it did not seem appropriate to start drawing employees into a company that was essentially insolvent. There was no business plan and it was not appropriate to bring employees into it for limited amounts of money until there was something more substantial to take to them that would leave some expectation that the company would be successful.

Mr. Epp: Would it be your impression--I am not sure you want to answer this--that if employees had put their money in it, it may have been good money chasing a bad situation? In other words, they may have lost some very important moneys of their own if they had put them in there and they may have gone down the drain, together with the company.

Mr. Winter: I think the facts have proved that to be true. By Mr. Graham's own statement, \$1 million was required at that point. That would be a minimum amount. Quite possibly, the employees would have lost their money.

Mr. Epp: The 30 to 50 employees would have had to put in at least \$1 million to keep the company solvent at that point.

Mr. Winter: That is right.

Mr. Epp: Ordinary employees do not necessarily have that much money that they can invest laying around.

Mr. Winter: No. If that had been the only source of financing, they would have had to put in that much money.

Mr. Epp: Unless they had just won Wintario or something of that nature.

Mr. Philip: May I ask a supplementary on that? If ODC had put in that \$1 million, could it have saved the company?

Mr. MacKinnon: There is a complex answer to that question. When Dome Petroleum went to the Canadian banks owing a total of \$100 million and asked for the next \$100 million, I imagine it probably said, "Give us another \$100

million and we will save it," and so on. I think the total is up to \$5 billion today. That line, "another \$1 million would have saved us," in all its variations, is repeated every time a lending institution or a major investor decides not to follow up on an earlier investment or a loan. Again, it is pure theory.

For reasons I explained in my opening statement and am prepared to explain further, it is our view that the company was dead in the water when we got it. There is no way a company with the problems this company had can be saved. It could not even generate accurate records; we heard that from two accounting firms. There is absolutely no way you can save guys who cannot even count the beans.

Maybe I can continue on that. We had another case running in ODC at the time, a company called Documented Circuits in Kingston. Documented Circuits is a high-technology company active in areas that, in many ways, are similar to the areas in which this company was active. We had a loan out to Documented Circuits and it inadvertently broke the covenants to the loan. It took the technology to the United States without informing us. That is a very serious problem from my point of view. I jump right through the roof when I see somebody breaking a loan agreement.

We went to that company and said, "What the heck is this all about?" They said: "We were wrong. We should not have done it. We did not know we did it. We are prepared to make amends. We are prepared to go out and get investment in this company, which is essentially insolvent. We will come back to you when we do. We will then ask you to make a contribution, but we will not ask you until we have some other money and have done some significant marketing of the product to demonstrate our good faith."

The result is a success story that will have major impact on Kingston now and in the years to come. This company now is back. It has new investors. It has all its beans counted and for \$300,000, which was only a backup in case they could not raise the full amount needed, we have the employment in this company back in Kingston. We have the company on its feet. We have our loan secured and we have gone a long way to our fundamental objective of viewing Kingston, in particular, as an area that is suitable for high-tech businesses.

If we are satisfied, and any lender and any investor will tell you the same thing, with the basic competence and integrity of management, we will bend over backwards.

Maybe I can just carry on. I am sorry to occupy the committee's time in this way, but in my view it is a very important point. Mr. Winter has been with the ODC for nearly 20 years. He was referred to yesterday as an "amateur bungler"--he or the corporation and I presume him since he was the official in charge. He was referred to as a "bungler," if I may spit out the word. Mr. Winter is a long-serving employee of the corporation.

In his youth, 15 years ago, he made two loans that I would like to tell you about. One was to a company which, at that time, could have fit in to half this room. He made a \$50,000 loan to this company. That was its first source of commercial credit. It was a high-risk loan. It was really equity in every sense of the word. This man made a \$50,000 loan to them. Today the company is Mitel Corp. Would we had more bunglers like that.

Another loan made by Mr. Winter in his portfolio was to a company called Lumonics, a major force in Ontario technology. He put money into them. He had

respect for the competence and integrity of the management. He put successive rounds of lending. He took major risks. The result is another key linchpin in Ontario's technology-oriented industry. Two loans made by one man, and that is only a few.

I ask you to contrast that behaviour with the behaviour of this company. I am just going to read it again to you. The records were in disarray. The staff were about to be laid off. The software authors were impatient. Creditors were calling us demanding payment of Graham's debts. Contrast that with Lumonics and Mitel, and I will want to ask you the question of who the hell the bungler is.

I am sorry if I get emotional about it.

Mr. Philip: May I ask you one question since you have used two words? You have used "competence" and you have used "integrity" vis-à-vis the Kingston company--

Mr. MacKinnon: Yes, vis-à-vis a Kingston company.

Mr. Philip: --in contrasting it with Graham. You have presented some evidence concerning competence. Would you explain to us what you mean by integrity?

Mr. MacKinnon: When a lender or investor looks at a business, he makes several key judgements. They try to make a judgement about the business that the corporation is in. A lender or an investor never can really know the business as well as the people in the business, so then they have to look for two other things almost as proxies to that knowledge. The two things they look for as proxies are first, financial information, and second, management competence. That combination of full disclosure of information, full and competent disclosure of information as well as knowledge of the business--the combination together which is examined by any investor or lender--is usually what is meant as integrity. There is integrity in both a competent sense and in a disclosure sense.

Mr. Epp: I want to get back at this. Can you give us a broader picture of the kind of stonewalling that was going on at Graham with respect to providing you with the kind of information you should have been getting if they were trying to be open and helpful with regard to getting additional funding to run an efficient, well-organized company?

Mr. MacKinnon: I think I can do it.

Mr. Epp: Stonewalling is probably not extreme at all, from what I gather, with regard to the kind of lack of information they were providing.

1100

Mr. MacKinnon: I can go even one step further than that. I can refer to a number of observations, just to make sure the committee is fully cognizant of the facts. I can provide you with some of the observations made by the Graham Software management over the last couple of days. Then I can produce the documented proof that those observations were not complete and accurate answers to the questions involved.

For example, it was alleged that we had brought the Laventhol and Horwath inquiry into Graham Software. Members of the committee will recall

that allegation from yesterday. There are three reasons for the Laventhol and Horwath delay. First, on December 23 the partner from Laventhol and Horwath, the principal in charge of that assignment, wrote a letter to Graham Software Corp. He reported the following: First, Mr. Krieger himself had been sick for two weeks with, I believe the phrase is, a "persistent virus." Second, he reported on a discussion he had had with Mr. Graham, which went as follows, and I quote from Mr. Krieger's letter, "Mr. Graham advised early this month (December 1986) that he wished the balance of our review to be deferred until the UCCEL offer could be closed."

I can go on. Incidentally, that report: We were seeking information for two weeks after the UCCEL information closed. We have been talking about information ever since with the auditors. We agreed, incidentally, that we would support their inquiries up to the last date on which we were a shareholder of the company, which was February 5. Surely we would not be expected to support their assignment to a company of which we are no longer a shareholder.

I can go through the testimony yesterday. I can discuss the--

The Vice-Chairman: Could you provide a copy, or has a copy of that letter been provided to the committee?

Mr. Cass: I do not know whether it has, but if it has not, it is here.

Mr. MacKinnon: Mr. Epp, I could go on. I do not know what you would like me to do.

Mr. Epp: Just a couple of more examples: I think the committee needs to have a better perspective of the kind of stonewalling that went on there.

Mr. MacKinnon: All right. I will take another one. Yesterday, it was alleged that ODC destroyed the ability of the company to raise capital. I guess there are several parts to that, but our response is very simple: They destroyed the ability of the company to raise capital. They tried to sell either the company or any or all of its assets and they signed a contract hiring somebody to try to arrange that sale on August 29.

I ask you to contemplate this. If you have a company, particularly in a circle where gossip and information travels very quickly, that has a contract signed with a broker or some other intermediary to sell any or all of its assets, what do you think that does to the likelihood that you are going to raise investment? I would say the answer is quite obvious. It effectively destroys it.

Mr. Wildman: Sorry; could I ask a supplementary?

The Vice-Chairman: I will that in Mr. Epp's hands. Your time has expired, Mr. Epp.

Mr. Epp: I just have one other question, if I may. I have been very generous with some of the supplementaries.

The Vice-Chairman: One more.

Mr. Epp: Mr. Winter, how many board meetings did you attend and would you give us an idea of the kind of information that was forthcoming at

those meetings? First, how many meetings did you attend, and second, did you get a feeling that the principals of the company were open with the board in providing the kinds of information that should have been provided in order that a board could make wise decisions in the best interests of that company?

Mr. Winter: I attended the only board meeting called during the time I was a director of Graham. That was the first one on July 31.

Mr. Epp: How long were you a director? How many months?

Mr. Winter: Seven months.

Mr. Epp: One board meeting in seven months?

Mr. Winter: One board meeting in the seven months. At that meeting the cash position and the desperate financial position of the company was revealed. I had the impression that was a fair shock to the other independent director who subsequently resigned, the day after I guess along with Mr. Wigdor.

Mr. Epp: What you are saying then is that the principals of the company were not forthcoming with the board and that in your judgement after being in the public service for 20 years, your feeling--

Mr. Wildman: On a point of order, Mr. Chairman.

Mr. Epp: Just a moment.

The Vice-Chairman: Mr. Wildman on a point of order.

Mr. Wildman: I am not sure your characterization of the answer is quite accurate, Mr. Epp. I think what the witness indicated was that at that meeting they were indeed forthcoming, and we have the impression that they may not have been previously.

Mr. Epp: Let me put it another way. Is it typical for a company that relies on the direction of its board members and is in financial difficulty to have only one meeting in seven months with its board when it relies heavily--would this be characteristic of a company that wants to get out of financial difficulty by only having one meeting with its board members in seven months?

Mr. Winter: No, normally there would probably be monthly board meetings and a constant flow of information to the directors.

Mr. Epp: Therefore, we can probably assume that it was not a sincere attempt by the administration to get the best advice from the board in order to extract itself from a difficult financial situation.

Mr. Winter: Effectively, there was little use being made of the board when it went seven months without a meeting.

Mr. Epp: Okay. Thank you.

The Vice-Chairman: I am going by party rotation. I will ask just two questions myself at this point, if I may, unless there is anyone over here--if people are in agreement.

First, there is a direct contradiction in testimony here between yourselves and Mr. Graham that I think we have to clear up. Mr. Graham and his colleagues testified yesterday that at no time were they in contact with or contacted by Mr. Biddell regarding the review or the future of their company; that, I recall, Mr. Graham said and both of his colleagues agreed. If committee members will look at tab 4, Mr. MacKinnon's notes for the remarks you made to us at the in-camera meeting on January 15, and look at item 48, you say that on October 17, 1986, "a telephone meeting took place among the principal parties: ODC and counsel, Terry Graham and counsel; and Jack Biddell." I just ask you whether in fact that is your accurate recollection, that that telephone meeting took place, because it would contradict Mr. Graham's testimony yesterday?

Mr. Cass: If I may speak to that, Mr. Gillies, I think it is quite consistent with what Mr. MacKinnon has said, but what Mr. MacKinnon said this morning, and I do not have the context of that right now, was that apparently Mr. Biddell was appointed on October 14. After that time, the only help or advice he would give to us would be of a technical nature because of his tremendous background in the field of insolvency.

On October 17, I asked Mr. Biddell to be part of that conversation with Mr. Graham and his counsel, who was Mr. Bennett down at Lang, Michener, at the time, and we had a discussion that afternoon about how the company would be wound up. I had previously been given an internal memorandum that Graham was in agreement that the company ought to be wound up. The evidence yesterday was that on September 26, Skerlec with respect to the Mazdamon product, Bill Douglas with respect to the micro products, and that was their whole inventory basically of products, had tried and said, "We are going to sell all the assets," when it was the understanding of our representative Mr. Goldfinger in discussions with Mr. Graham that he agreed with that.

1110

On October 8, I saw a memorandum in which Terry Graham indicated that he wanted to bring in a consultant or a receiver to bring about an orderly resolution of the matter. We then sent some of our officers into Graham Software to make sure the winding up would not ruin the contracts that were outstanding. In other words, it would not have triggered the default so that we could not have gone on to sell Mazdamon.

There was a general agreement with Graham Software that there would be a winding up. We involved Jack Biddell by asking: "What is the best way to do this? Could you be in this meeting with Graham's lawyer?" We tried to agree on the best way to wind up the company. It was something that Mr. Graham agreed to at the time and fully consistent with what he said earlier, that the company was insolvent.

All Mr. Biddell did was advise on the technical matters relating to a proposal in bankruptcy, a winding up or an interim receiver. The decision had been made by Graham Software and ODC at that time. It was only technical advice. I have one more comment I would like to make in Mr. Biddell's defence, because I think there has been an awful, unfair tirade against Mr. Biddell who, as we all know, is of the highest reputation in this country.

He came to me and I said to him, "There is an investigation of Graham ongoing." This was about a week and a half later when he got around to Graham Software. Laventhol and Horwath, by agreement of Mr. Graham and all the shareholders, was to go in and review the business affairs of Graham Software.

Immediately, Mr. Biddell was in touch with Laventhol and Horwath, and Laventhol and Horwath met with Mr. Biddell. Laventhol and Horwath had all the information Mr. Graham wanted to supply. Mr. Biddell can answer himself, but I know he had access and investigated all the information that Laventhol and Horwath had in its review of Mr. Graham, and Mr. Graham was supposed to give Laventhol and Horwath everything he had to say.

I guess I should not get this way about Mr. Biddell, who can come and answer for himself, but I was astounded yesterday to hear the comment of Mr. Wigdor about breaches of natural justice and unfairness when, in fact, he and Mr. Graham had a commitment to supply everything to Laventhol and Horwath. Mr. Biddell had access and did take steps to review all that matter. It is a very unfair statement, and they ought to have known better.

Mr. Wildman: Mr. Chairman, could I ask a brief supplementary?

The Vice-Chairman: I want to ask one question, if you will allow it.

Mr. Wildman: Okay, go ahead.

The Vice-Chairman: To the best of your knowledge, would Mr. Graham and Mr. Wigdor have been aware that the Laventhol and Horwath information was being shared with Mr. Biddell?

Mr. Cass: Absolutely.

The Vice-Chairman: Okay. By your evidence, the item in Mr. MacKinnon's statement is accurate, and at least on one occasion, October 17, 1986, Mr. Biddell did speak directly with the Graham executives in this telephone meeting.

Mr. Cass: Yes, he did. He was in my office.

Mr. MacKinnon: Mr. Chairman, I wonder if I could make an observation which is really of a technical nature. In this case, I believe the statement is accurate, but much of the materials you have in tabs came from documents that had not gone through full and final internal processes within ODC. Several of the documents in the tabs, including the briefing note discussed yesterday and this statement, are included for the sake of information of the auditors and members, but I would not make any claim that either of those documents had gone through the full internal ODC checkpoints necessary for a final product. I would appreciate it if members could bear that point in mind as they review the material.

The Vice-Chairman: It is a good point, Mr. MacKinnon. That is why I wanted to check the accuracy of this particular point.

The only other question I have is, Mr. MacKinnon, you made reference to a company, Documented Circuits. I wonder if you could clarify for me whether that company was part of the IDEA portfolio or ODC's portfolio.

Mr. MacKinnon: It was a regular ODC lending customer, not part of the IDEA portfolio. Perhaps I could explain for a moment. When we make a loan to a high-technology company, it is in fact equity or close to it. These are very high-risk loans. You can see in the Mitel one, when you make a loan to a small company sitting in a warehouse somewhere with no assets, you are making a loan based on the management and technical skills of the people, and that is very high risk. The techniques by which you administer a high-risk tech loan

with technology-intensive companies are certainly not identical, but very similar to those by which you would manage an investment of corresponding scale.

Mr. Sargent: I am concerned about your practice of the insiders' reports not being available to the people involved. I use the words "insiders' reports" in quotes. You know what I am talking about.

Mr. MacKinnon: No, I do not.

Mr. Philip: I think he is talking about the Biddell report.

Mr. Sargent: The ODC is a very powerful ministry. In fact, these people wanted--you had documentation they could not see. I am wondering why they could not see it.

Mr. MacKinnon: Are you referring to the Sharwood document or the Biddell inquiry?

Mr. Sargent: It was the Biddell inquiry, was it not?

Mr. MacKinnon: Mr. Cass has explained in general our view on that essential matter, which is that the shareholders of the company, including Graham Software, were required to provide information to Laventhol and Horwath, the accounting firm that was reviewing its affairs at the request of the shareholders. Therefore, all the material was fairly accessed.

I emphasize that the report which came to us--and I do not know the exact current status of the Biddell report--was the report we provided to the Provincial Auditor. There can be no fair claim on the part of the Graham people that the information contained in it was used to unfair advantage, because the matter we were dealing with, our relationship to the affairs of the company, was completed before Biddell even started.

Mr. Sargent: Has Mr. Biddell been doing a lot of this work for you?

Mr. MacKinnon: Mr. Biddell is a man well past retirement. He has the oddest retirement I have ever seen of anybody; he spends it all working. He is a man in his mid-70s. He is a specialist in this country in trusteeship, bankruptcy and other matters of that kind, as well as being a very senior founding partner in Woods Gordon. He is a man who is widely employed by governments of all--

Mr. Sargent: Is he paid on a per job basis? How much do you pay him?

Mr. MacKinnon: You would have to ask the government that question, because it commissioned the inquiry.

Mr. Epp He was involved in the 11,000 apartments flip, which was very complicated. He did that one.

Mr. Sargent: How much do you think he was paid?

Mr. MacKinnon: I really cannot speculate.

Mr. Sargent: Would it be \$15,000 or \$25,000 for this job?

Mr. MacKinnon: I cannot speculate, because I do not know.

Mr. Sargent: Did he do the job for you recently on problems up in my area?

Mr. MacKinnon: No, he did not.

Mr. Sargent: Did Biddell not work on that one? Someone was paid \$14,000 for that job.

Mr. MacKinnon: It was not Mr. Biddell.

Mr. Sargent: I know, but that is the type of job he is doing.

Mr. MacKinnon: If I recall the facts of the case, Mr. Biddell suggested the name of a former manager of a company in your area to conduct a review for us of the affairs of that company.

Mr. Sargent: How much does Biddell make in a year from you people?

Mr. Wildman: Maybe we should be asking Mr. Biddell.

Mr. MacKinnon: I cannot speculate on that.

The Vice-Chairman: I am going to make two points here as we move along. First, that is outside the scope of our inquiry, and, second, if we have questions about Mr. Biddell's income, we should ask him.

1120

Mr. Sargent: An observation I have is this: In the 25 years I have been around this place, the ODC has given hundreds of millions of dollars in loans to American firms in the excess-profits bracket and forgiven its loans: total forgiveness of hundreds of millions of dollars. I have a file that high of all the loans. This set of loans came to me by various methods. There are hundreds of millions of dollars there in excess-profits-bracket firms, forgiveness loans.

There is all this flak about a firm that tried to put together a package of high tech. I think your bottom line in this whole thing is that somebody has a problem with starting the IDEA Corp. I have complete faith in the management of the IDEA Corp. I think we are doing a big flak about nothing.

The Vice-Chairman: Do you wish to respond, Mr. MacKinnon?

Mr. MacKinnon: The IDEA portfolio is a strategically important portfolio. It is a large pool of venture capital. It has 60-some companies, and I think it is very important that we spend the right amount of time, in terms of the ODC, in terms of the government as a whole, in managing the affairs of those companies well.

You may regard this company as small, and in some ways it is, but it is still a question of taxpayers' money. That money has to come from, I do not know, schoolteachers, policemen, labourers and everybody else. We feel we have to take it extremely seriously, small as it may be, because of the source of the funding that potentially might be involved in it.

Mr. Wildman: Yesterday you were present during the exchange over what Graham Software was prepared to sell in August and September 1986 and what it was not prepared to sell and the process we went through in getting clarification of answers, shall I say.

Mr. MacKinnon: I have a certain sympathy, Mr. Wildman.

Mr. Wildman: Could you give us some indication of what ODC's understanding was after you met at the directors' meeting at the end of July, and then in August and September, of what Graham was attempting to do? What they finally indicated to us yesterday was that they were in search of an infusion of capital and they were prepared to do whatever was necessary to obtain it, whether it was selling some of the assets, all the assets or completely selling the company.

Mr. MacKinnon: I am glad you asked the question.

Mr. Wildman: I thought you might be.

Mr. MacKinnon: We were quite concerned and always have been concerned about what this company may or may not be trying to sell.

I will read you the first paragraph again of the Sutro letter that was discussed yesterday. That letter says: "The purpose of this letter is to confirm that Sutro and Co....has been retained by Graham Software...to contact on its behalf certain prospective purchasers...for the company's securities or, in lieu thereof, purchasers for all or a portion of the assets of the company."

The wording of this letter is absolutely clear, and I must say, by the way, Mr. Wigdor made some interesting observations on brokerage fees yesterday, but one brokerage fee for this business was not paid to Wigdor, it was paid to Sutro. In any event, just to show you our difficulties in getting information, it was not known to us at the time that this letter had been done.

Mr. Wildman: That was the August letter.

Mr. MacKinnon: This is the August 29 letter.

Mr. Wildman: Were you aware of the two letters of the next month, September 25 and 26?

Mr. Winter: Which letters were those?

Mr. Wildman: One was to Mr. Arbus, on the 25th. One of the things that was stated in that letter, signed by Mr. Graham, was, "We propose to sell 100 per cent ownership of GSC in exchange for four per cent of gross Mazdamon product revenues."

Mr. Winter: The only discussion with Mr. Arbus that we were aware of concerned the sale of Mazdamon, the Mazdamon product rather than the company.

Mr. Wildman: You will understand that yesterday we were first informed that that is, in fact, what they were doing. They were trying to sell Mazdamon. Then this letter indicated that one of the options they were looking at, I suppose from their point of view in a worst-case scenario, would be the sale of the company. You were not aware of that.

Mr. Winter: No, we were not aware of the sale, of the Mazdamon discussions with Mr. Arbus.

Mr. Wildman: You were not aware that they were also suggesting that, if necessary, they might be prepared to sell the company.

Mr. Winter: No.

Mr. Wildman: I do not have the other letter in front of me now. It was dated the next day, September 26. Here it is. It is signed by the vice-president, Mr. Skerlec. That letter is to Mr. Cutts of Sharwood. That is the letter that was concentrated on initially yesterday, in which they talked about the sale of the Mazdamon product. So you were aware of that. Were you aware of this specific letter or just that they were having discussions?

Mr. Winter: That specific letter came to us some time in October through Mr. Cutts.

Mr. Wildman: So the month after that you received the letter, but you had been already aware that they were having discussions about the sale of the product.

Mr. Winter: That is right.

Mr. Wildman: When did you become aware that they were also looking at the necessity, if it occurred, to sell the whole company?

Mr. Winter: The company had two product types, the Mazdamon, which is a mainframe product, and three or four micro products. We were aware of the sale of the Mazdamon, and there were also some discussions going on at that time for the sale of the micro products. If both of those had happened, the company would have no business.

Mr. Wildman: So it would be a business without a product.

Mr. Winter: That is right.

Mr. Cass: May I add to that? This speaks to the issue of when and if we knew that the company was being sold and what was going on at the company. It also speaks to the lack of information that we got from Terry Graham and Mr. Wigdor.

It was only on January 20, 1987, that I got something from Laventhol and Horwath, and this is what it says. It is called Mazdamon Activities Summary.

Mr. Wildman: Can you table that with the committee?

Mr. Cass: I will. It says, "BGS Efforts to Date." BGS is a big American company in the same industry that picks up products like Mazdamon for sale in North America.

"2. BGS upper management participation in multiple meetings with Graham personnel during July to explore technology/company acquisition as well as OEM relationship alternatives....Frequent, lengthy telephone discussions to track technology transfer happenings and continued attempts to identify acquisition preconditions."

Active involvement in the sale of Mazdamon and the sale of the company. When do we get it? January 10, 1987. Who gives it to us? Not Graham, but Laventhol and Horwath, who are conducting this inquiry, after my saying, "What went on with this company?"

Mr. Wildman: What is the date on that memo? Do you have a date on it?

Mr. Cass: There is no date on the memo, but it speaks to July 1986 as to what went on at that time.

Mr. Wildman: When you were just becoming involved.

Mr. Cass: We just became involved--never any disclosure--and January 20, 1987, is the date I got it. I will give this to you. Would you care for that?

Mr. Wildman: Yes. I would like to also turn briefly to the question of the Datamatrix default or possible default. Could you give us, again, your understanding of the whole question of \$21,000?

1130

Mr. MacKinnon: Again, Mr. Wildman, I appreciate your asking that question. I would be delighted to do that. You have heard testimony in the last couple of days to the effect that a game of poker was going on, or something equivalent to it, and that if we had not cured the deficit on this product, there was no assurance that Graham might not have.

That sounded very plausible, I must say, until I consulted with Mr. Cass and found out the exact circumstances under which the default was cured. It was cured at five minutes to midnight on the day the asset would have gone into default. It was cured by Mr. Cass, whose work habits are deplorable, showing up outside the office in the Simpson Tower at 11:55 one night with a cheque. He reports to me that there was no lineup of guys standing outside the office with a cheque. He reports in specific and particular detail--

Mr. Wildman: The fact that it was 11:55 p.m. might be construed as brinkmanship on your part, as well as on the part of the others.

Mr. MacKinnon: Well, I am just reporting the observation, Mr. Wildman. This is a negotiating situation. We are big boys too. If there was a representative from Graham Software who was contemplating curing the deficit, it was a man whose world was tuned remarkably finely, if I can put it that way. Do you want to speak to that, Mr. Cass?

Mr. Cass: If I could speak to that point, I heard Mr. Graham yesterday saying that he was playing poker. "Who is to say? I may have paid it," and, "I was negotiating to the last hour." I got my file out and I looked at my notes. They are hand-scribbled. This was going on 11:30 at night. This is on the back of my cub group's report, a statement of expenses, so I can assure you I was not at the office at the time.

The discussions all night went on with Graham Software's solicitor, myself and Mr. Graham. We had that afternoon agreed, and here is the handwritten agreement, that Ontario Development Corp. would pay the \$41,000. It was not an issue of who would pay it. We would pay it because it would not and we wanted to save the asset. It was backed for \$2 million of the taxpayers' money just three or four months before and it had to be worth more than \$500,000, which it wanted to let it lapse into.

I discussed it all evening with Mr. Graham's solicitor. We talked about the security we were getting for the loan, whether it should be a demand note and what the terms of reference for the inspection would be, but his lawyer said, "You have to speak to Mr. Graham because he thinks you are crazy to make the payment." My discussions with Mr. Graham were: "Don't cure it. Let it go

into default." My notes: "Don't cure it because it is really a good deal. We are not getting \$500,000, we are getting \$2 million. With \$1.5 million, the debt will be vanished and we will get \$500,000 on top."

He said that yesterday. Mr. Graham said it was a great deal. He said: "By the way, Mr. Winter is very concerned. If we do not get that \$500,000 and pay the creditors, he will be very upset. Take the deal and get the \$500,000. Besides which, this may be our last chance to get \$500,000 because later on, we will be in worse default."

At that point, it became abundantly clear what Mr. Graham wanted to do: let that product go back to \$500,000, causing a tremendous loss to the taxpayers. I went down at 11:55 p.m. to cure it, even though we had not settled on all the parts of the agreement that we were discussing, and paid the cheque so that we would at least have that asset to sell and try to get back some of the money. That is exactly what happened.

Mr. Wildman: I am not questioning that at all.

Mr. Cass: I understand.

Mr. Wildman: I know what you are saying, but in this letter of September 25 to Mr. Arbus, the first paragraph of that letter deals with the Mazdamon product rights.

Mr. Cass: That is right.

Mr. Wildman: That letter talks about their option to obtain the rights for the \$500,000 as part of their agreement, and it says, "If we cannot come to terms, our only alternative is to cure our present default and use the next 13 months to find a purchaser for Grasoft, while paying Datamatrix \$21,000 per quarter to keep the rights in good standing."

"I feel curing the default is not in the best interest of your client or the shareholders of Graham Software Corp. This course would cause serious damage to the product's continued development and marketing as well as interruption in supporting current end users and those who are trialing the product."

Do you have this in front of you? It is the September 25 letter to Mr. Arbus. It is number 24.

Mr. Cass: I think I have it.

Mr. Wildman: How do you interpret those two paragraphs?

Mr. Cass: I am sorry; I do not have that letter.

Mr. MacKinnon: Here it is.

Mr. Wildman: In reading that letter from Mr. Graham, what do you understand it to mean? What are they intending to do with regard to the rights to Mazdamon products?

Mr. Cass: As I indicated, Graham wanted that product to go back to Datamatrix for \$500,000.

Mr. Wildman: That is one way of getting the capital they are looking for.

Mr. Cass: No, the \$500,000 would have just paid off some of the creditors.

Mr. Wildman: Right.

Mr. Cass: You would have nothing left in the company. That was the point. He was willing to sell something for \$500,000, which ultimately turned out to be worth over \$2 million in cash. We did not want it to go for \$500,000. We wanted to have the chance to get \$2 million and pay people back.

Mr. Wildman: It is not exactly selling it for \$500,000; it is losing it for \$500,000.

Mr. Cass: The result is the same. We got \$500,000, as opposed to \$2 million.

The Vice-Chairman: The only thing I am missing here is "why?" In your submission, why did they want the \$500,000, as opposed to the \$2 million?

Mr. Cass: To pay off the debts.

Mr. Wildman: You are saying it was to pay off the immediate debtors. Right?

Mr. Cass: The reason is--

Mr. Wildman: To an extent, you are speculating as to what was his reasoning.

Mr. Cass: Okay, I will not speculate. I will just say there were two letters. One from Skerlec said: "We tried to sell it. Let it go back to Datamatrix for \$500,000." Douglas's letter said: "Let us get rid of all the micro products." It was a fire sale. "Get rid of all the assets." He says in his letter, "It is not in the best interest for us to cure the default. If we did cure it, we would cause serious damage to the product's continued development and marketing as well as interruption in supporting end users who are trialing the product."

Mr. Wildman: In your understanding, what does that statement mean?

Mr. Cass: What it means is that we cannot carry on business. We can make a \$40,000 payment, but what that is going to do is wreck your product, because our company is kaput.

Mr. Wildman: You do not have the wherewithal to continue with its development.

Mr. Cass: He says it.

The Vice-Chairman: You have time for one more question.

Mr. Cass: He said, "We would cause serious damage to the product." Datamatrix came to us and said, "Get that product out of Graham Software or we

will sue you for \$10 million." Their lawyer, Arbus, came into my building and said that to me.

Mr. Wildman: Okay.

Mr. D. W. Smith: I will not take too much time. We had a lot of questions asked yesterday and I want to see whether you can confirm one of them. What do you believe Mr. Graham lost personally in this total deal? The government or the taxpayers put in something like \$5 million. I believe Mr. Graham put up hundreds of thousands. In the end, you only got back \$300,000 out of this total deal, so how much did Mr. Graham actually lose personally?

1140

Mr. MacKinnon: In my opening statement I went to great pains, for reasons that should be obvious, to note that we have been unable to get sufficient information for normal commercial decision-making on the affairs of this company. We do not know where all the money went. We have had no audited statement since, I believe, the summer of 1985 as to what has happened in this company. I can assure you that we will find out when and how every nickel came in and when and how every nickel went out.

Mr. D. W. Smith: Will the Biddell report prove any of this?

Mr. MacKinnon: The Biddell report is a review. To do that, you would need--I am choosing my words quite carefully--a very detailed and thorough examination of all the affairs of the company, probably starting with audited statements and all the details supporting them. Once we have that, we will determine exactly what else we would need. But I will tell you, with some emphasis, it is our intention to find out exactly when and how every nickel came into this company and exactly when and how every nickel went out.

Mr. D. W. Smith: Were any of the shareholders of Graham Software shareholders of UCCEL?

Mr. MacKinnon: Not that we know of, and if they were, it would have been incidental.

Mr. Philip: I have provided you with a copy of the conflict-of-interest code of the conduct manual of the IDEA Corp. What I find interesting is that on July 1 you take over. You sure do not waste any time. Two days later, July 3, a letter is sent from ODC stating that Bill Douglas is replaced by Robert Winter, director of special financial services, as the ODC nominee on the board of Graham Software.

You heard my questioning and my great concerns to Mr. Blakley, to Mr. Graham and to the solicitor, Mr. Wigdor, about conflict of interest. Do I take it that your very speedy action in removing Mr. Douglas from that position was the result of the same kinds of anxieties and suspicions I had that they had a definite conflict of interest in serving two masters at that time?

Mr. MacKinnon: Yes. There is a brief answer and an extended answer. Perhaps I can give both.

I was very concerned. First of all, I believe on either June 14 or June 19, a member of my staff who was facilitating the wind-down of IDEA and its transition to us--I would like to come back to that point, the transition, in a moment--drew that to my attention. He said, "Did you know?" I said, "I sure

as hell did not." Then he said, "What do you want to do about it?" I said, "Is any investment pending?" He said, "No." I said, "Then leave it until we get it." I remember that was the exact phrase.

Then I reviewed the whole portfolio. On the morning of July 1, I started personally reviewing it in detail. It was the first time I ever took a detailed look at each and every one of the companies personally. My wife and kids were away on a holiday and I had nothing better to do on the morning of Dominion Day than to do that. I came to that and I made another note to get Douglas off that board and have him replaced immediately. That is why it happened. We did leave some of IDEA's staff members who were on short-term contracts with us on some of the boards. We made the changes over the course of the next month or six weeks.

Mr. Philip: Are you suggesting that this conflict of interest that affected Mr. Douglas and Geoff Cannon--let me back up. You say that Mr. Douglas had a definite conflict of interest. Did Mr. Cannon have a definite conflict of interest?

Mr. MacKinnon: It was not known to me at that time, Mr. Philip, that Mr. Cannon had been accepting payment from Graham Software for a consulting assignment. I did not discover that until some time in the last couple of months. Had I known that, he would not have been on a short-term contract with us, nor would he have been allowed to have been on any board.

Mr. Philip: In your opinion, Mr. Cannon had as much a conflict of interest as you say Mr. Douglas had. It is just that you did not happen to know about it at the time.

Mr. MacKinnon: Yes. Let me just say that conflict-of-interest problems like this are both serious and tragic in their consequences. There are some things you do for which there is no acceptable explanation. In my judgement, however much those two individuals--we know them. I know Mr. Cannon. Before Mr. Cannon joined us on a short-term contract, I had him checked up, down and sideways. He is an outstanding person of outstanding capabilities, but even with all that, it is not possible to serve two masters at the same time in the way he did.

Mr. Philip: Part of the problem a committee like this has is not dealing just with the technical information--and you provided some fairly interesting technical information to Mr. Wildman and some other members of the committee this morning, and I was tempted to get back into some of that stuff--but also with the credibility of the witnesses and the people involved. I wonder about a company that would hire someone who is in a decision-making position to influence taxpayers' money going into that, and then come before this committee and say they did not know there was something unethical or wrong about that. It is a matter of the credibility of the witness that is at stake as much as the actual action.

Is there any reason you can think of that Mr. Douglas and Mr. Cannon would not know of the conflict of interest or--what do they call it?--the code of conduct of IDEA Corp.?

Mr. MacKinnon: They should have known of it, Mr. Philip. I do not want to get philosophical, but this issue is going to have consequences for all individuals concerned. Perhaps I should say just a few things. I disagree profoundly. I said so in my opening statement; I stand by it and I will not change. I believe the IDEA supervision of this investment was grossly

deficient. I have said so and I believe that, fundamentally, both for conflict-of-interest reasons and for informational flaws.

I am like you. I sit here and worry about credibility of witnesses and all that sort of thing and it is important. In my view, all three individuals--I particularly watched Mr. Blakley in this case. I know Mr. Blakley. I have had a lot of dealings with him. He is a man I respect. So is Mr. Cannon and so is Mr. Douglas.

The question I have been wrestling with--perhaps at some point we could talk about it--is why this while IDEA problem--I mean, my colleagues and I, and you have seen the details of one case, have been traipsing through this in other cases. We have a few good ones but we have some terrible problems to deal with. The question I have been asking myself since last July is, how did this occur? All the people involved in IDEA individually are outstanding people in many ways. I worked my first job as Ian Macdonald's executive assistant. He is an outstanding figure in this city and in this province. I can go through the piece but the collective result turned out to be a disaster.

I have been thinking about several things as I think those thoughts. One is an essay by David Halberstam, the person I quoted in my opening statement in a book called *The Best and the Brightest*, which is a history of the Vietnam war. He is asking the same question. He is saying take all the individuals--here is an abstraction from the circumstances of this case--in the senior levels of the United States government in the early 1960s, McGeorge Bundy, Robert McNamara, Dean.

You can go through a list and you have some of the most distinguished people in American public life, law and business, and you can examine the progression of the Vietnam war throughout the entire early 1960s as a succession of unmitigated disasters, and the question is why. The title says it all: *The Best and the Brightest*. Yet, somehow, some things worked that, taken together, produced a disaster.

1150

I do not want to go into details. In my view, this situation is of that kind. It is a collective, sort of a cultural, institutional problem. You may recall that in my opening statement I indicated that our real purposes in this case, the real reasons that have driven my colleagues and me in terms of our decision-making, are not just limited to the case.

They are limited to a series of broader objectives, and the broader objectives are to clean up as best we can the problem cases we have inherited so that the commercial programs operating by the government of Ontario are genuinely accessed by those who merit the access and are not accessed by those who are not, and that our administrative apparatus is equipped to make those decisions intelligently.

Mr. Philip: I am only granted 20 minutes. I am going to try to walk you through a couple of the documents and I want to get your opinion on them, just so we know exactly where I feel those two gentlemen at least were in conflict of interest and why it upsets me greatly, and to confirm whether your understanding of the Manual of Administration and so forth is the same as mine.

First of all, let me ask you this question. Did I understand you to imply that there are other companies that were invested in with IDEA Corp., where there is a conflict between those decision-making persons who were in

IDEA Corp. and those companies? I mean, are we going to be facing another scandal of conflict of interest on some other companies that you would--

Mr. MacKinnon: I do not think so, but I have to qualify that observation by saying that, until a very short time ago, I did not know about the Cannon employment contract. I do not think so. To my knowledge, no; you cannot preclude the possibility, but I doubt it.

Mr. Philip: No one else on your staff then knows of any other conflict at this point in time. We are dealing only with one company there. All right.

Let me work through then whether there is a conflict, and I think it is important because I think the accusation or the argument was made yesterday by Mr. Wigdor and I guess by Mr. Douglas that somehow disclosure then was enough. I want to walk you through what I understand the rules to be.

First of all, the Ontario Manual of Administration does not apply in this case because it is a schedule II corporation.

Mr. MacKinnon: Correct.

Mr. Philip: It only kicks in where there is a code of ethics or a conflict-of-interest resolution passed that says either we adopt the Manual of Administration guidelines or here are our own. In the case of IDEA Corp., IDEA Corp. chose the latter. It turned out its own code of ethics, which is not all that dissimilar from that of the Manual of Administration.

I supplied you with a copy of that code of ethics. Let me ask you whether you feel that there was a conflict, since you are the one who, two days after you took over, immediately tried to stop that and issued a letter to stop that conflict. Of all the other things you had, with all the other companies, you zeroed in on this and said, "Oh, my goodness, we had better act." You obviously felt strongly about it or were very concerned.

First of all: "'conflict of interest' is defined as a situation in which a staff member has a personal or private pecuniary interest or business involvement, sufficient to interfere with, influence, or appear to influence, the exercise of his/her duties and responsibilities."

An example of direct pecuniary interest of particular concern to IDEA Corp. includes external consulting work for investees or potential investees of IDEA Corp. and investments in technology-oriented companies. Is that not what Mr. Douglas and Mr. Cannon were doing?

Mr. MacKinnon: Yes.

Mr. Philip: It goes on to say, furthermore, that the person will not "carry on any business which conflicts with the business of the corporation, or that could reflect adversely upon the corporation." Would you not agree that the business of this corporation was investing money, providing risk capital? That was the major business of this corporation. It was not in business for any other purpose.

Mr. MacKinnon: Yes. At the time, the purpose of the IDEA Corp. was to provide investment capital and the purpose of Graham Software was to access it.

Mr. Philip: Would you agree that Mr. Cannon's and Mr. Douglas's responsibility was not only to recommend those investments but also to say, in an objective way, "Certain investments are too risky; we just cannot take them"?

Mr. MacKinnon: Yes.

Mr. Philip: Would you agree that during the time Mr. Douglas was serving as the ODC representative on Graham, he was at the same time in the employ of Graham or receiving moneys from Graham?

Mr. MacKinnon: He had a contractual employment.

Mr. Philip: At that very same time, he was preparing recommendations as to whether additional financing would be going from the taxpayers, through IDEA Corp., to Graham Software.

Mr. MacKinnon: Yes.

Mr. Wildman: May I ask a supplementary, briefly? I believe Mr. Graham indicated yesterday that he thought it was in the interests of IDEA to ensure that the people who were involved were fully informed and that this was not unusual in dealing in companies that provide pre-venture capital.

Mr. MacKinnon: It is not at all. If he had not accepted any compensation for it, there would be no problem. The key phrase there is "pecuniary interest."

If I may just go on from that, there are a lot of shadings in here. On conflict of interest, I was reminded of a great piece of literature, Herman Melville's Billy Budd, as I sat here and went through this case at the time. There are some things for which there are no reasons, however logical they may have seemed at the time, and the consequences are disastrous if they occur, no matter what. This situation is one of them. There is no reasonable explanation for being in that position.

Mr. Philip: Let me go further. On the second page: "Handling of Confidential Information: No staff member shall divulge confidential information obtained as a result of his/her employment, unless legally obliged to do so"; in other words, unless you are called before a committee such as this or a court.

Would you agree that it would be absolutely impossible for a person to serve on the board and also be the staff person making the recommendations and be in the employ of the company at the same time?

Mr. MacKinnon: It is possible to serve on the board of a company and to make recommendations concerning its funding, provided you are not accepting any personal pecuniary remuneration for it and provided everybody concerned knows what goes on.

For example, I serve on the board of a major company, of which ODC is a shareholder. I am ODC's nominee to that board, but I am also the person who provides advice to the government on its financing. The key is that I accept no personal benefit.

Mr. Philip: Mr. Douglas, though, was obtaining a consultant fee, supposedly doing things that would enable the company to make a better

presentation for moneys from IDEA Corp. At the same time, would he not be the person who would be passing judgement on what essentially was his own input into the company as a consultant?

Mr. MacKinnon: There is no question that he was, and there is no question that he is in a conflict-of-interest position.

Mr. Philip: Therefore, the confidential information section becomes completely inoperable, because he was telling the same information to himself.

Mr. MacKinnon: Frankly, I have not worked through the logic of that. I have not thought of the question you were asking.

The Vice-Chairman: One more last question.

Mr. Philip: My last question concerns Mr. Blakley's conduct, that is, the observance. It says, "The president, as chief executive officer, is ultimately responsible to the board of directors for the observance of these standards."

1200

To your knowledge, did Mr. Blakley, when informed by Mr. Douglas--we know that in the case of Mr. Cannon he could not remember it, so he obviously did not deal with it--go to the board of directors at that time and inform them? Was it a decision exclusively of Mr. Blakley or of the board of directors?

Mr. Cass: I am not exactly sure of the circumstances and I am not sure exactly what went on at that meeting. Where there is a conflict of interest, it has to be disclosed to the decision-makers.

Mr. Philip: If I am not mistaken--we can look at Hansard--Mr. Blakley, in response to my question to him, said that he made the decision, that he did not inform the board. Would this not be a direct contravention of the observance clause in the code of ethics?

Mr. Cass: I have to say that any time any information comes before the board of directors, the full particulars of the relationship of the person making the presentation have to be made available to the board. I will also say that if the full particulars had been made available, I am sure the board would have immediately rejected any kind of supplications in any way whatsoever from Mr. Douglas or Mr. Cannon.

Mr. Philip: In everything I have heard, I am completely convinced that the auditor is right, that there was a conflict of interest in the case of Mr. Cannon and Mr. Douglas.

The Vice-Chairman: Just before you start, Mr. Ferraro, do I have the agreement of the committee? We do have two witnesses this afternoon. We should try our best to complete our questioning of the ODC witnesses and adjourn at 12:25 or 12:30.

Mr. Ferraro: I have three questions, so I will try to be brief.

Mr. MacKinnon, to you and your staff, I think it is unfortunate that ODC will be remembered for the loans and assistance it did not give as opposed to the many loans and assistance ODC does give. I suggest to you it is not dissimilar to the plight of politicians.

First, I want to touch on the Biddell report and the discussions that took place yesterday and today. You indicated that you did not know the exact status of it exactly, right now in the ministry, but I understand that Mr. Biddell's report is not entirely completed yet, that more information is being compiled by Mr. Biddell. Do you have any knowledge of that?

Mr. MacKinnon: I talked with the deputy minister last night, and he confirmed that. Mr. Biddell and I chatted about a month or six weeks ago. I suggested to him that, from my point of view, some additional information in certain categories would be helpful to me in reviewing our actions.

What we try to do with all outside reports--for example, the standing committee on government agencies reviewed our operations in detail under the direction of Mr. Gregory--we just sort of say, "There is what everybody says," and then we sort of match it up with what we do. It is in that sense that we are primarily interested in the Biddell report. Then we say, "If he says that something did not go right, we should fix it." We view it as just a guideline.

Mr. Ferraro: Let me switch to my second question. That deals with the demise of the Graham Software Corp., if I may say that from the standpoint that I now understand that it has basically new ownership and that some of the principals, or at least one, has a minor shareholding position in it.

Part of the reason this committee is dealing with Graham Software is based primarily on two factors. One factor is the concern over the expenditure of public moneys, which is viable and certainly logical. The other was that allegations were made, primarily, Mr. Chairman, with respect, by you. An innuendo, and in fact allegations, were made that there was impropriety on the part of the government of the day, and indeed a conflict of interest.

The record will show that those allegations are totally unfounded, that there have been no Liberals in the cookie jar as far as Graham Software is concerned, that IDEA Corp. and the Graham executive have indicated there was no impropriety on the part of the government, much to your chagrin and that of others I am sure.

The Vice-Chairman: That is your opinion, Mr. Ferraro.

Mr. Ferraro: I am getting to the point where I think that the witchhunt did not produce any witches, save and except that it produced, in my view, a bigger witch than some members of this committee might like to recognize. That is that the IDEA Corp. itself is a nightmare. While the original intention may have been honourable, and I appreciate that, the facts are that there were no controls, that it was an independent body dispersing public funds and that the conflict of interest appeared among the IDEA employees.

I pointed out that after the government took over four months later, we disbanded IDEA, and I commend the Treasurer for that, but you indicated that the demise of Graham Software was part and parcel of the fact that the business community knew that Graham Software was up for sale. I agree that is a negative influence. My point is that because the media and politicians made unfounded allegations--I know that happens every day and I am not harping on the fact that the media has a job to do. Indeed they do, and in my view, if there is impropriety, they should take it to the nth degree. The fact is that all this press certainly could not have helped the prospects for Graham Software either. Would you comment on that.

Mr. MacKinnon: There are a couple of problems.

Mr. Ferraro: Mr. Graham alluded to the fact yesterday that it may have started when the allegations were made.

Mr. MacKinnon: Let me divide, if I may, the post-IDEA period and the pre-ODC period. The decision on Graham Software, the decision-making on these cases is made, first of all, when my colleagues and I come to a conclusion and I go to the Deputy Minister of Industry, Trade and Technology, because we are doing this as an agent for the government on major strategic cases or problems.

I say, "Here is what we are proposing to do." He says, "Yea, nay or maybe." In most cases, he says, "Yes, go right ahead," and the discussion terminates right there. We talk about cases of major strategic significance three or four times perhaps over the following week. The deputy always insists that we get good outside advice, as we did in this case. As far as I am aware, I am sure the deputy discusses the decisions with the minister, but I am not a party to that and I have no comment.

Most of the decisions in this case are made by the three gentlemen sitting here and the deputy minister at key strategic points. Since July 1, in fact quite often, when there is an awkward little fact, quite often the deputy is advised. I neglected to tell him about the \$40,000 loan to cure the Mazdamon default. We make most of those decisions, and they are quite routine decisions made at officials' level in a normal technical way.

In response to Mr. Pope, in the Wyda case, and I am sorry he is not here, because it is key in terms of the fairness of the process. He asked me that question way back in connection with Wyda, fundamentally whether there was political influence at that point and why the flow of funds was so rapid in particular of the dying days of the IDEA Corp. I explained to him that, in my view, the answers to that were strictly technical.

It was strictly technical, and there were three factors at work. One, there was a cumulative buildup of customers coming from a comparative period of inactivity in the early stages of IDEA Corp. Two, some people were sensing that time was running out and crowded in proposals; you had a crowd-in from behind and a crowd-in from the front. Three, there was quite a natural tendency on the part of the IDEA staff at that time to do as much work as quickly as possible and as efficiently as possible, I presume, so that they would be seen to be doing their job.

In my view, the explanation for the patterns of funding in the final few months of the IDEA Corp. is to be found in those three factors. The board of IDEA Corp., in fact, certified there was nothing else at work.

1210

I do not know. It would be a great tragedy, from where I sit; I do not want to go through my best and brightest routine and all that sort of stuff again, but to me this case and the whole IDEA case illustrates some very basic points.

We said in our opening statement that for 20 years, provincial governments in Canada have been having difficulty mounting these kinds of economic development programs. Governments in all regions have had the same problems. I am from Prince Edward Island, grew up in Nova Scotia and spent much of my adult life working for the government of Nova Scotia. They had the same problems. The same is true of Manitoba. Churchill forest products, the Glace Bay heavy water plant, the Prince Albert pulp mill--you can go through a

whole series of major economic development initiatives in all parts of Canada and show there were significant problems with a great many of them.

I think the issue of the IDEA Corp. is, what does it tell us about those problems and how we have to manage government and public agencies so that we prevent them, given that those kinds of problems have appeared in all regions, for all provincial governments of all three major political persuasions? That, to me, is where the hearings of this committee--

Mr. Ferraro: I totally agree with you, Mr. MacKinnon. I think the real sin, if you will, was the lack of control of the public purse and the requirements of a crown corporation therein.

My final question to you is this: You may have addressed this before but I want you to address it again. Mr. Graham and, I believe, other members of the delegation yesterday indicated that part of their demise was attributed as well to the fact that when Mr. Nixon announced IDEA would be wound down, roughly three and a half months after taking office, they were under the impression it was going to be Innovation Ontario and that when ODC stepped into the picture, the intent was obstructive, unco-operative, and indeed, much of the action of ODC led to their demise, among other things. Would you agree with that, and in retrospect, would you do anything differently?

Mr. MacKinnon: I have listened to the testimony. I have made my opening statement. There is not a single step I would change in the light of what I know now, except I would do it all faster--not one single step.

In this case, let me just refer to that "bungles" comment of Mr. Graham. He said he became entrapped with a bunch of people who were not professional managers. The fact of the matter is, when he came to us, it was the first time he had faced professional management. We provided--I do not even want to know. Never inquire what this case has cost us internally, but we provided the services of Mr. Winter, an experienced investment manager. He manages some very large investments. At any given time, he has tens of millions of dollars on his table. He is an experienced small business lender. I just cited two cases where his track record of making loans to small businesses has produced--of course, the efforts of the companies themselves have to be given the predominant credit--but his lending, in two cases, can be shown to have demonstrated two very large and viable companies.

I will not embarrass him by going on further, but I could.

Mr. Sargent: It is a mutual admiration society here.

Mr. MacKinnon: No, Mr. Sargent, I am just telling you. I am responding to a specific accusation.

Mr. Sargent: You can get the violin out.

Mr. MacKinnon: I am responding to a specific accusation. He got Mr. Cutts, who is a merchant banker of some distinction, on the case. He got Don Budge. Don Budge ran with the president, the operator of a company, a technologically intensive company. He was with us for five or six months and left and now is the general manager of another similar company. He got the services of a Mr. Desrosiers internally, who is another experienced lender and manager of the government's investments. We have Mr. Cass's time. Mr. Cass is

one of the most senior commercial lawyers in the government. He tells me he was a Queen's counsel until last year and that he regrets the loss.

The Vice-Chairman: There is a lot of that going around.

Mr. MacKinnon: So there are half a dozen people of some awe--a unique private sector-public sector group of people, all of them demonstrated to be strong.

Mr. Ferraro: On this case, you would not do anything differently.

Mr. MacKinnon: Not a thing.

The Vice-Chairman: I will ask one or two questions along the same vein as those just raised by Mr. Ferraro and ask for comments from your point of view.

The government's defence, both initially and consistently, on the approval of the Graham Software grant and, indeed, other similar grants by IDEA is twofold: First, that the IDEA Corp. was at arm's length, that investments were made in an independent way without recourse to the government; and second, in the case of Graham Software, there was nothing unusual and there was no particular push for this investment and so on.

The evidence before this committee, though, would indicate that there were a number of unusual things about this particular investment approval. I will enumerate them. There are three that I have noted. First, IDEA approached Graham about the investment and not vice versa, and to the best of the officials' recollections, this was the only case where that had happened. Second, I believe Mr. Blakely said within a week to 10 days of the initial meeting, the assistant deputy minister, Mr. Barnes, was asking questions and taking a particular interest in this particular investment. Third, Mr. St. Amant, a ministry official, who will be before us this afternoon--and I guess we will ask him this too--took particular interest in this particular investment.

Just from where you sit, Mr. MacKinnon, first, how usual would it be for government officials to take such a hands-on approach to an investment in the crown corporation portfolio, and second, do you have any thoughts as to why there was particular interest from government officials in this particular investment?

Mr. MacKinnon: I think the testimony that was basically given on this issue was testimony that is right, from what I understand of the facts, and this is secondhand. This was an investment in a marketing corporation as opposed to a prime generator. That, itself, is unusual and probably quite wise in terms of the fundamental goals to be pursued. I think all concerned would agree that it is important that Ontario software producers have an improved mechanism for marketing their products. It is entirely possible that I would view and I did view this business initially as a business probably of unusual strategic importance because so much else could feed into it.

If you were able--in this sense I agree with the Graham Software people--to get a very strong software marketing corporation going with proper internal management, it would be an initiative of some strategic importance in terms of the Ontario economy. I expect that is what Mr. Barnes will tell you

was his interest; I do not know. You can ask him but that is what it looks like to me.

The second thing, and probably a reason that everybody would take some special interest in it in terms of the IDEA portfolio, is just that it was different. It would require quite a bit of discussion, I would think, at board and staff levels to do it at all because it did appear to be just different from anything else they did.

Third, and I indicated that I would come back to the transition stage and perhaps I might use this opportunity to do that, Mr. St. Amant was a liaison officer from the ministry for a time. Mr. St. Amant is my subordinate. He works for me and I know quite well what he was doing at that point; he was assessing. He had a consultant working for him to study the whole portfolio and it was I who was the prime user of that report.

So over a period of three months, when I came on stream on March 3, one of the first things I did was inquire as to the status of this portfolio since it was made clear to me by the deputy minister that I would be expected some day to take it in. I did inquire and I did work with him quite carefully and I asked questions at that time as to which ones, which were and everything else. I would suspect that Mr. St. Amant's detailed look at that portfolio, which was vital to me at the time, probably explains the bulk of the contacts he had.

1220

I should say that I have not asked him since this subject came up two days ago. I have phoned Mr. St. Amant and said: "You should know that you are going to be called. There is a videotape that my secretary has made of the proceedings. You should go up to my office and watch it." I have not asked him any questions nor indicated to him any of the committee's concerns. He, of course, will answer those questions directly.

Those are the answers from where I sit. It was strategically important--it still is--to do something for the software authors. It was an unusual transaction and Mr. St. Amant had quite a specific role that involved getting the detailed knowledge of all the IDEA Corp. investments. I was the prime user of that detailed knowledge at the time.

The Vice-Chairman: It would be logical also to see an unusual characteristic of this investment being that it was the single largest by IDEA.

Mr. MacKinnon: Yes.

The Vice-Chairman: So if you were going to review the portfolio, probably you would want to look at some of the bigger ones first.

Mr. MacKinnon: Yes, that is exactly what we did. Mr. Winter, Mr. Cass and I began work almost immediately on what approach we were going to take to the three biggest investments. You will recall that we did not move on Wyda, for the reasons I have described in detail to this committee. We did not want to be seen to be interfering although we waited in the wings, I might say, with growing concerns. We did move on the Middlefield one and this one within a month. The essential decision-making on those two was completed by early October, as I have previously testified.

The Vice-Chairman: Just one other brief question: At what time were

you actually informed that the ODC would be taking over the IDEA portfolio?

Mr. MacKinnon: It was raised with me as a possibility before I rejoined the government. At that time it was not definite, but there was a strong possibility, and that would have been in December or January.

The Vice-Chairman: December 1985 and January 1986.

Mr. MacKinnon: It would have been December 1985 and January 1986. I did take a growing responsibility later in the spring, once I came aboard, and it was I who had all the discussions, which you referred to earlier this morning, with potential parties interested in the portfolio.

Mr. Cass: May I have a supplementary response to your first question in terms of Mr. St. Amant's or Peter Barnes's involvement in what was sort of a new foray in investing in a form of technology enhancement for the province? What the IDEA Corp.'s act says is that the board shall manage the corporation in accordance with the policy of the government of Ontario. In other words, if you are straying and getting into new policy areas, you should make sure it is consistent with the government policy related to that particular technological investment.

Just in supplement to Mr. MacKinnon's remarks, on something that was a pioneering effort in terms of an investment, not with a company with a product but with a marketing organization, the board would be required to check to see whether that was consistent with government policy. I just wanted to add that. That is section 8 of the act.

Mr. Epp: I guess one of the questions that needs to be directly responded to is the accusation made yesterday by Mr. Wigdor, by Mr. Graham and by Mr. Wawrew; that is, when ODC took over, in fact, you contributed to their downfall. You have indicated, of course, that was not the case.

Given your expertise in this area and that of the other people in the ODC, the fact that Graham got \$5.1 million, do you think that based on its original objectives, anyone who got that kind of money from the government, those kinds of incentives, that kind of equity investment, should have been able to make a success out of this company, rather than a failure?

Mr. MacKinnon: I believe they should have. The opening, introductory description of the Nissan sales campaign was designed to make that point. There is nothing more expensive to sell than cars. They started off with a bunch of guys at 15 bucks a day, tracking every penny. They had a communications system by which, if the phone did not ring three times, the guy at head office knew that the salesman had nothing to report so there were no costs incurred. That is how you have to pinch the pennies and manage the money.

If I can make a second comment on that, at one point I made a decision. I listened to all the evidence and went back and forth. The Datamatrix letter of September 5 to Graham Software was for me very basic. Everyone looking at the evidence made his or her decision at a different time. In my own mind, that letter was critical, and I will tell you why. There were four breaches of the agreement with Datamatrix that Graham Software had fallen into. Remember, this is the holder of their most valuable asset.

The first was a failure "to provide our company with a statement certified by an officer of your company setting out your company's gross revenue...for the quarter year ending July 31, 1986." To fulfil that breach is

really simple. You go down the hall, talk to the chief accountant and say, "Mr. Accountant, what is your gross general revenue?" You then type it up on a piece of paper, sign it, put it in an envelope, lick the flap of the envelope, throw a stamp on it and put it in the mailbox. That is all that is required, and that was not done.

Mr. Epp: It is that simple and it was not done.

Mr. MacKinnon: What finally got me resolved that this company would never under any circumstances get any money from us was a very simple matter. If you cannot get it together to get a letter in the mailbox to cure a default like that, you cannot get anything together. My kid puts letters in the mailbox.

Mr. Epp: Mr. Cass, we were talking earlier about the conflict of interest. You are a solicitor and you advise ODC on matters. If someone like Mr. Cannon or Mr. Douglas had come to you and you were working for Graham and Mr. Wigdor was fully aware of the implications of conflict of interest and so forth, would you have advised Graham Software in this instance to pay Mr. Cannon and Mr. Douglas to do work for you while they were still in the employment of IDEA Corp.?

Mr. Cass: Absolutely not. When that happens, if it ever does happen around our corporation, even if the daughter or son of one of our employees tried to go to work for a company in which we had an investment, we would stop it right in the bud. We have done that. There is absolutely no discretion whatsoever to permit any of our employees to take one nickel from one of the recipients of a loan from ODC. That is absolute, no discretion.

Mr. Epp: It would have been particularly incumbent on you, as a solicitor, to advise your client not to hire people who were, in turn, giving advice, to IDEA in this case, to provide money to your company?

Mr. Cass: Absolutely. Especially in this case it would be even worse, because Graham was paying Cannon and Douglas to put something together that would enable me to get some money. They were putting together an offering circular, which said: "We have a wonderful company. Give me some money." Then they flipped to the other side of the desk and said, "Let me see this submission you are providing." It is outrageous.

Mr. MacKinnon: Mr. Epp, may I make a supplementary comment? Before Christmas one of our employees was sufficiently misguided as to give his résumé to one of our customers for a contemplated job offer. That came to my attention, I brought it to the deputy minister's attention and we decided to suspend the guy for a while. As those of you familiar with the public service know, a suspension for a cause like that is tantamount to capital punishment, because it means you will never go anywhere again. He was forced to resign six weeks later; he has gone.

I am convinced to this day that he did not even understand. It was entirely out of the kind of motivations we can all understand. In many ways, this case may yet illustrate some of those factors. I looked at Cannon quite closely. I have a great deal of respect for him. It is easy for these kinds of things to happen.

1230

Mr. Epp: The point I am trying to make is that if anyone should have

known better, it is Mr. Wigdor, the legal counsel to Graham, who was fully aware of all these things, even if Mr. Cannon and Mr. Douglas were not. As a lawyer, he should have advised against it. He was party to that whole matter occurring.

Mr. MacKinnon: He probably should have known it was inappropriate, and so should Graham. They should have known that for their own self-preservation, because if there was a change, even in the management of IDEA Corp., anybody who was a professional manager of funds looking at that as either an investment or a loan would regard that with extreme disfavour.

Mr. Philip: May I ask a supplementary?

Mr. Epp: If it does not take too much of my time, because I have about five more minutes.

Mr. Philip: If I am not mistaken, Mr. Wigdor seemed to indicate that he viewed it as a private business thing, that this is what is done in the private investment venture capital world. Is that correct?

Mr. MacKinnon: It is entirely possible that at times a blurring of the work does take place. For example, I am a member of the board of a major high-tech company in Ontario in my job capacity. I am also the civil servant who recommends the funding on that company to the government, but I do not take any pecuniary remuneration. In some cases in my past, whenever I have provided services that were expensive and the company did pay a fee, it paid it to the Treasury and the money went back to the government.

They are right, in a sense, that sometimes the two worlds do blur. Where it goes completely astray is if you take a plug nickel for that work. That you cannot do. I go back to Billy Budd and Herman Melville. There are no circumstances which justify that.

Mr. Epp: I want to get back to the point that was raised earlier with respect to this 11th-hour sale or purchase of Mazdamon. I want it clearly on the record. As I understand it, Graham was not even prepared to put in \$41,000 of its money in order to save this company into which the public had already put \$2 million and had given \$5 million to Graham Software. They were not prepared to put in \$41,000 to save an investment of \$5 million that the people of Ontario had put in.

Mr. Cass: That is absolutely correct. As I indicated in my comments, it went further. He actively tried to persuade me not to do it either. He said, "Don't do it; \$500,000 is good money"; not as good as \$2 million later on, as we found out. He actively encouraged me not to put the money in.

Mr. Epp: On what date did that occur?

Mr. Cass: It was October 17, the Friday night that I had to go down to the Simpson Tower.

Mr. Epp: October 17, 1986?

Mr. Cass: I think it was October 17; it was that Friday night.

Mr. Epp: So there is absolutely no doubt left in your mind, or in the mind of anyone in ODC, that they were not trying to protect the public interest and the public investment in this company? In fact, they were going

out of their way to destroy any kind of investment that the public had made in their company?

Mr. Cass: Absolutely.

Mr. MacKinnon: The letter I referred on the Datamatrix default clearly supports that point of view as well. If you have a contract for your most valuable asset and one clause involves reporting your quarterly revenue, and you fail to do that because you cannot get it together to mail a letter, that shows you are not protecting the assets. Clearly.

The Vice-Chairman: Thank you, gentlemen. We will stand it down for the time being.

Before we adjourn, I would like to get some direction from the committee on scheduling matters. We will have Mr. St. Amant and Mr. Barnes this afternoon and we have scheduled Mr. Cannon for 10 o'clock tomorrow morning. The subcommittee met yesterday and feels we should devote tomorrow morning to the Graham Software matter and then proceed to the courthouse matter on Thursday afternoon. I assume we are in agreement with that.

The other thing I would like to suggest for the committee's consideration, and maybe I could be given direction at two o'clock, is that because of the conflicting, in some cases, and very strong nature of the evidence that has been put before us, it occurs to me that we may be prudent in allowing 15 minutes for each of the three major groups to make a closing statement before the end of the matter and, before we get to the point of writing a report, perhaps afford them the opportunity to submit anything they would like in writing.

Mr. Ferraro: Much of the discussion has been based on the idea of conflict. Should we get a legal opinion?

The Vice-Chairman: That may be a very prudent idea. We all have our readings of the IDEA manual and the Provincial Auditor's report.

Mr. Ferraro: If we are going to make assertions to that effect in our report, it would be nice to substantiate them with some professional expertise.

The Vice-Chairman: We could ask our legislative counsel.

Mr. Philip: The evidence is overwhelming.

Mr. Ferraro: I have a tendency to agree with you.

Mr. Philip: We are a parliament, and the auditor has said there is a conflict. I am convinced there is a conflict.

The Vice-Chairman: We have heard the auditor's thought; we all have our own. None the less, to cover it, why do I not have the clerk trot a copy of the pertinent documents and Hansard up to legislative counsel and ask for a brief report on that?

Would it be your thought that the ODC, the IDEA people and the Graham Software people should all be given 15 minutes tomorrow morning, after Mr. Cannon is finished, to put forward some closing thoughts?

Mr. Philip: Without questions?

The Vice-Chairman: I would suggest without questions. There are a lot of things flying back and forth among these witnesses, and I believe they deserve the right to respond.

The committee recessed at 12:38 p.m.

CA 20N

XC21

-P73

Publicati

P-65

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

WEDNESDAY, MARCH 25, 1987

Afternoon Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Sargent, E. C. (Grey-Bruce L)

Smith, D. W. (Lambton L)

South, L. (Frontenac-Addington L)

Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South

Gregory, M. E. C. (Mississauga East PC) for Mr. Davis

Hennessy, M. (Fort William PC) for Mr. Pope

McLean, A. K. (Simcoe East PC) for Mr. Runciman

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From Innovation Ontario Corp.:

St. Amant, M., Acting Director

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor

From the Ministry of Community and Social Services:

Barnes, P. H., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Wednesday, March 25, 1987

The committee resumed at 2:08 p.m. in room 151.

GRAHAM SOFTWARE CORP.
(continued)

The Vice-Chairman: The first order of business this afternoon is a new witness, Michael St. Amant. Perhaps Mr. St. Amant could come forward to the table, in front of one of the microphones? We invite you to make any remarks you care to about the matter before the committee before receiving questions, or just answer questions, as you please.

Mr. St. Amant: I will essentially answer questions.

The Vice-Chairman: Okay. Thank you. Questions for this witness?

Mr. Epp: I will start, just very briefly. Mr. St. Amant, perhaps you could give the committee the benefit of your experience before you came to work with the government in this capacity. We have had the same kind of elaboration by other members who came before the committee here and it might be helpful from our standpoint regarding the experience and so forth you have had in the public sector.

Mr. St. Amant: My career started with teaching at the University of Toronto where I taught for a number of years. I subsequently worked for several years as information officer for the Ontario Conservative Party. Subsequent to that, I moved up to Queen's Park, where I was affiliated with the government members' service bureau. In 1978, I took a job in England administrating Ontario House; I was there until 1983.

I returned to the province and subsequently worked for the innovation and technology division, where our mandate was to establish the Ontario technology centres, to play a role in policy formulation in terms of the strategic development of technological industries in Ontario. In the last couple of years I was there, I was working on a number of special projects that related to infrastructural support items in which we introduced a number of new initiatives such as the innovation centres that are located on campuses across the province.

In February 1986, I was asked to assist in the wind-down of the IDEA Corp. I was there on an interim basis until roughly May of that year, when I more formally moved up to the development corporations. Since then, I have been acting as director of the new Innovation Ontario Corp.

The Vice-Chairman: Just for the record, could you state your title and responsibility at the present time?

Mr. St. Amant: Sure. I am the acting director of the Innovation Ontario Corp. My responsibility is essentially that of a managing director. I supervise currently 12 staff. We have a budget approval in the range of \$12 million. Our mandate is to assist in the development of technology-based enterprises. Our role is to provide what is called pre-venture financing. We work with technology-based companies that are essentially in a startup phase and in a seeding type of situation.

Mr. Epp: Can you indicate to this committee when you became aware of the Graham file and how you became involved in it?

Mr. St. Amant: Sure. The IDEA Corp. had reported to the innovation and technology division at the Ministry of Industry, Trade and Technology. The reporting relationship was to Mr. Barnes for most of the period in which I was there. I was aware that there had been an investment made in a marketing and distribution company known as Graham Software. At this stage, I was not totally familiar with the details of the nature of the investment outside of the fact that the aim and objective of the corporation was to provide a vehicle through which Ontario developers of software could access international markets, predominantly the US market. That was about the extent of my knowledge until I went down to the IDEA Corp.

Mr. Epp: Pardon me for interrupting, but exactly when was that?

Mr. St. Amant: Exactly, it was February 19, 1986.

My knowledge of the Graham file sort of increased during the period I was down there, because one of the responsibilities I had in winding down the corporation was to do a preliminary review of what the portfolio was composed of. At the time, going in, we did not have a great deal of knowledge of exactly what that portfolio consisted of or how it was structured; so as part of our activities in assessing how best to deal with the portfolio, I was working towards providing a picture of what the portfolio consisted of.

Mr. Epp: I suppose one of the reasons you are before this committee is that it was indicated that you aggressively--that is my word, but I think that was the impression left with the committee--supported the extension of additional funds to Graham Software. Would you picture yourself as having done that? Second, if that is the case, why did you do it?

Mr. St. Amant: I certainly did not see my role as being aggressive. The reality of the situation was that when we went down to the IDEA Corp., we had several activities that we were performing. One was the administrative assessment of what was there in terms of fixed assets, personnel problems and that type of thing.

The second issue related to the investment portfolio. My role was essentially that of what I loosely describe as a liaison officer. One of the things that was consistently happening was that clients who had been dealing with the IDEA Corp., both people who had actually received investments and people who had proposals in to the IDEA Corp., were calling and making inquiries as to what was going to happen to their investments or their portfolios.

In that vein, I was contacted by Mr. Graham, who wanted initially to discuss the software industry in general. I agreed to meet with him. We had an original meeting planned, and that was cancelled. Then I think we subsequently met on February 26. At that time, Mr. Graham indicated exactly what his company had been doing in terms of the market strategy it was employing, how his business was developing and provided some background, which fitted into the context of the type of analysis that we had been doing previously in the software industry in Ontario.

Mr. Graham also indicated that he had ongoing negotiations with the IDEA Corp. and that his company was now at a relatively crucial stage of its evolution in that it was going through the process of acquiring new products.

It had an opportunity to acquire a product that I believe is called Mazdamon. He was quite interested in knowing what was going to happen to any potential future development or investment from IDEA Corp.

I agreed with them at the meeting that I would make inquiries. This was consistent with the way I dealt with most of the companies that called, because when people called the IDEA Corp., they referred them to me. I guess they did not want to deal with bad news situations; I am not sure. Anyway, we ended up agreeing that I would make inquiries.

I met with Mr. Douglas, who I was told was responsible for the IDEA investment in Graham Software. We had a discussion that was geared towards obtaining the historical background of the previous investment, which I think occurred in September 1985. We were trying to get some background as to the performance of the company to date in terms of how effectively it had dealt with the marketing of the Intellisys software--I think Alice was the other program it had--and attempting to obtain information from Mr. Douglas as to exactly the current state of affairs between IDEA Corp. and Graham Software.

The gist of the meeting, from my perspective, was informational, but at the same time the agenda for action in terms of the wind-down process had indicated that the board and IDEA Corp. would continue to operate as a business activity until June 30.

1420

I did ask Mr. Douglas if they had been pursuing work with Graham Software towards ancillary investment. He indicated that they were doing so on two fronts. One was the acquisition of private sector funding to support the overall development of the company. Their target was focused largely on US venture capital. He expressed that they were having a great deal of difficulty dealing with Ontario or Canadian venture capitalists and that the market seemed more ripe in the United States for this type of investment.

The context in which we discussed the Graham Software case was that they had been doing some background work on the project. He indicated that at some point they would probably be taking it to the board for some additional funding. Basically, from my perspective, that was the end of that conversation.

I understand that Mr. Douglas had indicated that I was bullish on the concept. Frankly, I had several discussions subsequently with a number of staff at the IDEA Corp. One of the interesting facets about the Graham Software file was the potential it had to support a broader number of Ontario-based companies. To that extent, if the company succeeded, I guess I was not optimistic but bullish on the concept. But it was not the only type of software marketing distribution company that could service Ontario industry.

Certainly from my perspective, I had no major interest in whether the IDEA Corp. staff subsequently brought it to the board of directors or had the project approved. My view was that the corporation was operating as a business--it was a schedule 2 agency--and it was mandated to continue to do so until June 30. Given those terms of reference, any project, whether it was Graham Software or whatever, would have to go through the normal channels within the corporation. Essentially, that is my background.

I subsequently worked towards completing the file in terms of our assessment of Graham Software. That was an ongoing process. From our perspective, the files were very difficult to capture because quite often most

of the information was in the heads of the consultants or in the personal files, so it became a long, drawn-out affair.

Mr. Epp: You not only worked on this file, but you worked on a number of other files?

Mr. St. Amant: That is correct.

Mr. Epp: With regard to the organization of this file, the information that was made available to you and the thoroughness with which that information was provided, how would you compare this file with other files? Was it well organized and well documented, was information made readily available to you, the signs of a successful company, as opposed to sloppiness and information not being made available to you, the signs of a very unsuccessful company?

Mr. St. Amant: To the extent that we did a quick review of the existing file at the IDEA Corp., background documentation on the first investment was there along with the business plan. I think that focused largely on the conceptual development of the company and how it was going to go.

In terms of our doing a detailed type of assessment of that particular investment along with the others, that, in fact, occurred on an ongoing basis. It required meetings with Mr. Douglas and the other consultants who worked at the IDEA Corp. because much of the information was captured in their heads, I guess for want of a better word, and the details they could provide on the performance of a company were documented to a limited extent but not to a great detail in terms of the ongoing files.

Mr. Epp: In other words, if you were expecting a company to be successful then you would expect them to have more proper records kept, a greater thoroughness and understanding of the business, and try to provide information to those people who were helping to make decisions to make that company successful.

Mr. St. Amant: I think the thoroughness is a byproduct of the activities of how the corporation manages its affairs, and by corporation I mean IDEA Corp. With respect to the business performance of a company, such as Graham Software or any of the other investments, a key ingredient--and I can assure you it is one that we are employing at Innovation Ontario--is that you have to effectively monitor these investments on an ongoing basis. You have to capture information on a regular basis to measure performance. At the particular stage prior to the March 6 investment, there was limited information available within the file. It was our discussions with Mr. Douglas that to some extent suggested the company was moving in the right direction.

The Vice-Chairman: Time for one more question.

Mr. Epp: So the information that you primarily used in supporting the application for an additional \$2 million was the information that you got from Mr. Douglas?

Mr. St. Amant: I would not say that supporting is the right word.

Mr. Epp: Advocating? In fact, you were bullish on this. We were told you were bullish about it.

Mr. St. Amant: No, I would say that to the extent--

Mr. Epp: I am quoting your word of what Mr. Douglas said yesterday.

Mr. St. Amant: To the extent that it looked like a good business opportunity, I suppose one could feel hopeful that it would succeed. It was still in the very early stages of development.

Mr. Epp: You felt at that time that you were in possession of the full facts in order to advocate an additional \$2 million of taxpayers' money.

Mr. St. Amant: I did not advocate.

Mr. Epp: You did not recommend? You were not in support of?

Mr. St. Amant: No.

Mr. Epp: You were opposed to it?

Mr. St. Amant: No. As I pointed out, the process I was going through at that time was to acquire information. I had an inquiry from a client--

Mr. Epp: You were of no opinion with regard to this and you never voiced support of it? That is not the information we heard yesterday.

Mr. St. Amant: I suppose in terms of the overall need to have a good distribution and marketing company to support software development in Ontario--

Mr. Epp: You were supporting the concept but not this company?

Mr. St. Amant: I did not not support the company.

Mr. Epp: Then you did support the company, or were you neutral? You never voiced an opinion.

Mr. St. Amant: I was neutral to the extent that--

Mr. Epp: That you did not oppose it.

Mr. St. Amant: I feel I did not want to interfere with the corporate decisions of the IDEA Corp.

Mr. Epp: Just a moment. Was the decision already made? They were relying on your information.

Mr. St. Amant: They were not relying on my information.

Mr. Epp: They were relying on your information as well as others. You are one of a group.

Mr. St. Amant: That is not--

Mr. Epp: I want to be fair with you, but I also want to be fair with Mr. Douglas, who is here in the audience, and everybody else. They said that you supported it. You quoted him as saying yesterday that he said you were bullish on it. You are now saying you are of no opinion. Then you are saying, well you maybe were not opposed to it, and then you are not sure whether you are opposed to it or in favour of it.

Mr. St. Amant: No, I do not mean to appear contradictory, but I am trying to dissociate two roles. The first role is the business assessment on the performance of Graham Software; the corporate decision that the IDEA Corp. would have to make in terms of whether it was a good idea to make it an additional investment. What I am trying to say is that was a function of the role that the staff played within the IDEA Corp.

1430

In terms of me, personally, affecting that decision--

The Vice-Chairman: I am going to have to cut you off. You are over your 20 minutes.

Mr. Epp: One question and a one-word answer. Were you in support of it or were you not? Yes or no? Yes, you were in support of it. No, you were not in support of it.

Mr. St. Amant: The answer to that is I was not opposed to it. It does not mean I am a stark raving advocate running around saying you have to invest in Graham Software, because that was not the case.

Mr. Philip: Mr. Douglas clearly said that you were in support of it. You are now saying that--I really do not know what you are saying.

Mr. St. Amant: Sure. Okay.

Mr. Philip: I have seen people skate in committee before and this seems to be a skating exercise. What, in fact, did you say at the time? What was your recommendation at the time?

Mr. St. Amant: In terms of proceeding with an additional investment in Graham Software?

Mr. Philip: That is right.

Mr. St. Amant: My opinion was it was a decision that the staff would have to make and take it to the board of directors. The IDEA Corp. was a schedule 2 corporation. It was responsible for its own business and corporate affairs until June 30.

Mr. Philip: What was your input into that staff decision?

Mr. St. Amant: My input was a meeting which, at that stage, resulted from a meeting with Terry Graham and Ken Wawrew from Graham Software. They had made an inquiry, as did many other people. I agreed to pursue that inquiry, which I did with Mr. Douglas. I did indicate that conceptually the project was a good project, that conceptually the project seemed to make sense.

Mr. Philip: Let us try it this way then. Maybe we can trace all of the steps and then maybe that will help us to understand.

I heard you say earlier that Terry Graham contacted you. That was the initial contact. Why would he contact you, specifically? Where were you in the hierarchy of IDEA Corp. that you would be the initial contact?

Mr. St. Amant: I do not know how Mr. Graham got my name, but the process that was occurring during the wind-down period was that if there were

inquiries about cases coming into the IDEA Corp. by telephone they were referred to me.

Mr. Philip: Okay. In a sense then, you were the intake person for any new inquiries. You were almost--

Mr. St. Amant: New inquiries or updates on existing cases.

Mr. Philip: So you were the front desk, so to speak. You initially then have a conversation with him.

Mr. St. Amant: That is correct.

Mr. Philip: What does Graham say to you on the phone?

Mr. St. Amant: He asked if he could meet with me to discuss the software industry and to discuss the activities of his company.

Mr. Philip: At that time, did you tell him the company was winding down?

Mr. St. Amant: The IDEA Corp.?

Mr. Philip: Yes.

Mr. St. Amant: He was aware of that. Yes.

Mr. Philip: Did you tell him that there might be some restraints on moneys available as a result of that wind-down or was that your opinion?

Mr. St. Amant: In terms of moneys available, the position that I took was that the IDEA Corp. was an operating concern up until June 30. Its structure and its financing rested with decisions made by its board of directors. If cases were ongoing and active within the corporation, the staff were mandated to continue to review them. If they were new cases entering the system, there had been a freeze or an embargo and the staff would not deal with them.

Mr. Philip: You see, it is that latter that I find difficult and some members of the committee have expressed similar concerns on various occasions. If you have a government that is winding down a program, why is it that suddenly you are out there banging on the bushes spending such large amounts, more than the previous government had spent, on some very substantial investments? What was your understanding of the wind-down? Why do we suddenly have you in this position, not just of dealing with what is already on stream but actually going out and looking for new business, so to speak?

Mr. St. Amant: But I was not out looking for new business. The issue was that there was a decision made by the government that in order to treat fairly the clients who were doing business with the IDEA Corp., the corporation would have a wind-down period which extended from February 19 to June 30 to wrap up those transactions.

Mr. Philip: The wind-down was a jazzed-up wind-down. My idea of a wind-down is that you slowly phase out of operations and that you take care of the business on hand. Instead, what you have is a massive expenditure of moneys, the like of which IDEA had never seen before.

Mr. St. Amant: I think there are two explanations for that. The first explanation is that there was a backlog of cases that evolved at IDEA Corp. which staff were trying to address. The second explanation, I presume, relates to the role the management had undertaken in terms of delivery of its program or its mandate.

Mr. Philip: Maybe you can refresh my memory. This application was completely new after the wind-down was announced. Is that correct?

Mr. St. Amant: That is not the information I had. No.

Mr. Philip: The initial inquiry, that phone call to you, was not after you were informed that IDEA Corp. was winding down?

Mr. St. Amant: The phone call and the meeting took place on February 26. The wind-down was announced on February 19.

The mandate of the corporation was to continue operating until June 30. It was directed to undertake development of cases that were currently on file. When I met with Mr. Graham, he had indicated they had been dealing with the IDEA Corp. in terms of a second round of venture capital investment. The information I had was that the file was already ongoing. I met with Mr. Douglas on February 26 through 27, in that time frame.

Mr. Philip: At that meeting, had you previously reviewed the file?

Mr. St. Amant: It was around then, but I think it was subsequent to the meeting with Mr. Graham.

Mr. Philip: When you met with Terry Graham--on February 26, did you say?

Mr. St. Amant: Yes.

Mr. Philip: You in fact had identified and physically had in your possession the file backdating prior to February 1?

Mr. St. Amant: When I met with Terry Graham?

Mr. Philip: Yes.

Mr. St. Amant: No.

Mr. Philip: But--

Mr. St. Amant: I am not trying to confuse you.

Mr. Philip: You said it was not a new application after the wind-down was announced.

Mr. St. Amant: You asked me if I had a file in my hand on February 26 when I met with Mr. Graham. I did not have the file in my hand. I understood the meeting was to be an informal type of meeting in which we were discussing--

Mr. Philip: Was there a file in your office that you perused pre-February 1? Please do not play word games with me. You know what I am asking.

Mr. St. Amant: The answer to that was that the information I was given was that Mr. Graham had been in dialogue with the IDEA Corp. on the investment.

Mr. Philip: I am not asking for the information you were given. I asked you a very specific question. Did you review a portfolio of any kind, a file--

Mr. St. Amant: Subsequent to my meeting with Mr. Graham, I did. Yes.

Mr. Philip: Prior to meeting with Mr. Graham on the 26th?

Mr. St. Amant: No. Subsequent to that.

Mr. Philip: After you met with him. Did that file that you reviewed date back to prior to February 1?

Mr. St. Amant: There was a large number of documents in it. The corporate program that was outlined in the business plan of Graham Software had indicated there would be future acquisitions of software.

1440

Mr. Philip: Initially, on any file in any government agency I have ever seen, there is an initial date stamped on it. That is the date on which the first approach, the first initiation, the first item--

Mr. St. Amant: That would have been August 1985.

Mr. Philip: That would have been August 1985; so in fact Graham had been looking for venture capital with IDEA prior to--

Mr. St. Amant: That is correct. Yes.

Mr. Philip: Why does it take so long for you to answer a simple question like that?

Mr. St. Amant: I apologize, but the question you asked me was, did I have a file in my hand when I met with Terry Graham. I did not. It was subsequent to that that I got out the file.

Mr. Philip: Why would you not have reviewed it before you met with Mr. Graham?

Mr. St. Amant: Because the initial understanding of my meeting, which had been arranged through my secretary, was that we were going to discuss software and software marketing and that type of thing. At the meeting, Mr. Graham brought up the role of his company, quite rightly so, and he wanted to know what was going to happen to it relative to the IDEA Corp.

Mr. Philip: I had a meeting with somebody last night who wanted in a general way to discuss a particular problem on which I had sent some correspondence two weeks ago. The first thing I did before meeting with the person, even though it was a social event, was to at least review the file to find out the latest update on this man's sister-in-law. That is a common thing that one would do.

Mr. Ferraro: On a point of order: It is totally irrelevant. Why does

Mr. Philip persist in badgering Mr. St. Amant on that. I meet with hundreds of people myself and I do not always have the occasion or the inclination to brief myself. If that is his style, that is his style. What has that got to do with Mr. St. Amant?

The Vice-Chairman: Order. Mr. Philip has the floor.

Mr. Philip: It was not a point of order; it was a point of view and, as usual, a fairly superficial and unsubstantiated point of view.

Mr. Ferraro: It was a point of fairness.

The Vice-Chairman: Could I ask all members of the committee to conduct themselves in a civil manner and let us try to get through this.

Mr. Sargent: Look who is talking.

The Vice-Chairman: What do you mean, "Look who is talking"? I am trying to set an example.

Mr. Philip: Could you tell us exactly--I am asking you the question again--what input you had into that initial staff meeting concerning this portfolio?

Mr. St. Amant: With Mr. Douglas? Is that the meeting you are referring to?

Mr. Philip: Yes.

Mr. St. Amant: We met with Mr. Douglas. We discussed the historical background of the Graham Software file. Mr. Douglas had indicated he had been working with Graham Software in his capacity at the IDEA Corp., and the issue of the additional venture capital funding came up. I remember in the course of that discussion he said they had been reviewing options and one of the options was to pursue it through the IDEA Corp. board.

Mr. Philip: What did you say?

Mr. St. Amant: I did not object and, as I stated previously, I thought the concept and the broader objectives of what Graham Software was trying to accomplish made sense.

Mr. Philip: So you told them it made sense?

Mr. St. Amant: Graham Software's objectives, yes, they did.

Mr. Philip: You told them you had met with Mr. Graham and the idea made sense?

Mr. St. Amant: I told them I met with Mr. Graham and that there was an inquiry concerning what was happening relative to the IDEA Corp. investment and the issue of a second round of investment. Yes.

Mr. Philip: The procedure from there was that Mr. Douglas--and who else would have gone into greater detail on the Graham application?

Mr. St. Amant: I presume it was Mr. Douglas and he reported to Mr. Cannon. I imagine that between them--

Mr. Philip: There would have been a written report. Mr. Douglas was preparing the technical report and Mr. Cannon was preparing the recommendation or the conclusion. Would that be correct?

Mr. St. Amant: I honestly cannot answer that because I do not know the details of how they worked together. What I know is there was a report produced that was placed on the agenda for the March 6 meeting.

Mr. Philip: Did you see that report at any time prior to the meeting?

Mr. St. Amant: I do not think so. I know I saw it at the board meeting on March 6 for sure.

Mr. Philip: Were you asked for comments prior to its going to the board meeting?

Mr. St. Amant: Not that I recollect.

Mr. Philip: The next stage is that it goes to the board meeting on March 6. May I ask what input you had into the board meeting at that point in time?

Mr. St. Amant: I sat there as an observer. I did not sit at the boardroom table.

Mr. Philip: Did anyone ask your opinion on the file?

Mr. St. Amant: On Graham Software?

Mr. Philip: Yes.

Mr. St. Amant: I do not think so, no.

Mr. Philip: So you did not have an input at that time?

Mr. St. Amant: The only opinions that I recollect I was asked were regarding personnel matters in terms of what was going to happen to the corporation staff and that type of thing.

Mr. Philip: I am trying to understand your role in all this vis-à-vis Mr. Douglas and Mr. Cannon in particular. If your role was to be the liaison person or what I would call, from my public service days with the federal government, the intake person in terms of new applications or new business--and this was relatively new business, whether it started before the phase-down or not--what was your role vis-à-vis people like Mr. Douglas? Douglas was the technical expert who would go in there and examine. Would you just handle the files and pass them on to an expert, whichever one would be appropriate, or how did this work?

Mr. St. Amant: I made inquiries about the files if clients or people with proposals had requested to determine what the status was. In terms of handling the files in relation to a decision-making process, that was not part of my function. In terms of handling the files by way of preparing a preliminary report on what was in the IDEA Corp. portfolio, that is something I did.

Mr. Philip: If I understand your role--and I hope you will be able to answer this question from the point of view of a business I do understand a

little bit more about--you would be analogous in a sense to the clerk of the Ontario Highway Transport Board. You would be there describing perhaps what the essential application would be, keeping applicants informed as to progress, but not making any of the technical recommendations and certainly not making any of what I would call the judicial-type recommendations, the yes-or-no ones about whether to go ahead; is that correct?

Mr. St. Amant: That is correct. Plus, there was another side of my responsibility, the administrative windup, which was totally divorced.

Mr. Philip: That was more of a personnel function than anything else.

Mr. St. Amant: In part it was personnel, but it was also coming to grips with things like fixed assets, the structure of the lease, the previous severance agreements and that type of thing. It was a two-dimensional function, I suppose.

Mr. Philip: The way you are describing it, you had absolutely no influence on the decision, no real influence on the decision that resulted in Graham Software getting a loan.

Mr. St. Amant: Outside of raising the issue with Mr. Douglas, the process that project went through in terms of the business analysis, the recommendation, the placing of it on the agenda and subsequently the board approval, I did not play a direct role in that, no.

Mr. Philip: But your role was process rather than content?

Mr. St. Amant: Essentially, yes.

The Vice-Chairman: Your time has expired, Mr. Philip. I will have to put you back on the list. If any other members wish to ask questions, I will put them on the list.

1450

I would like to ask you, Mr. St. Amant, when you first heard about the Graham Software proposal. Did I hear you correctly? August 1985 was your first knowledge of it?

Mr. St. Amant: No, that was the first piece of information.

The Vice-Chairman: That was the first piece of correspondence of which you were aware?

Mr. St. Amant: As far as I remember, yes.

The Vice-Chairman: Your first knowledge of it would have been into 1986, when you were taking on the new role vis-à-vis the IDEA--

Mr. St. Amant: More detailed knowledge. I was aware that IDEA Corp. had made an investment in Graham Software and that it was to support the marketing of software in Ontario.

The Vice-Chairman: What did you know about Mr. Graham? Did you have any knowledge of him or his background, his business experience?

Mr. St. Amant: Not in any great detail at the early stage. Later on, of course, I was aware that he had been a partner with a number of other

people in Polaris and they had successfully divested themselves of that particular investment, that he was in the process of developing a new marketing company and seemed to be pulling in experienced and good people around him to execute that project.

The Vice-Chairman: You were aware that he was a partner in Polaris, I believe it was until June 1985?

Mr. St. Amant: Roughly, I guess. I do not know the details or the breakdown of that.

The Vice-Chairman: Who were the other partners in that particular company?

Mr. St. Amant: Obviously, I knew Abe Schwartz. Mr. Schwartz was involved in that.

The Vice-Chairman: Did you have dealings with Mr. Schwartz during this period on this or other related matters with the ministry?

Mr. St. Amant: I can honestly say I never discussed Graham Software with Mr. Schwartz. I did have dealings and meetings with Mr. Schwartz on other matters.

The Vice-Chairman: Subsequent to June 1985, Mr. Schwartz had a role in the transition team for the new government.

Mr. St. Amant: That is correct, yes.

The Vice-Chairman: You would have dealt with him on other matters at that time regarding the transition?

Mr. St. Amant: I met with him on transition-related issues, yes.

The Vice-Chairman: In your dealings with Mr. Graham, would the relationship with Mr. Schwartz come up or be pertinent in discussions regarding Graham Software?

Mr. St. Amant: I do not remember that having come up, no.

The Vice-Chairman: Regarding your reporting relationship, if you had any findings or things you felt you had to pass along to your superiors regarding Graham, where would they go? Did you report to Mr. MacKinnon or to Mr. Barnes?

Mr. St. Amant: During the wind-down period--Mr. Barnes had left the ministry by then--the reporting relationship was sort of two-faceted. I reported to Mr. MacKinnon on matters that would have related to the portfolio and its status and issues that I saw coming up with respect to dealing with the portfolio. I also reported to Mr. Kruger on the wind-down side and the business activities of the IDEA Corp. up to June 30.

The Vice-Chairman: I have asked this question of ODC officials and I want to ask it of you also. Several aspects of the handling of the Graham file seem to have been different from the handling of other similar files in the IDEA portfolio; the things I have identified anyway.

First, to the best of our knowledge, it was the only company that was

approached by IDEA in the first instance; as opposed to the company approaching IDEA, IDEA approached the company. Second, there was the particular interest that Mr. Barnes had in this company and the testimony before the committee that he had been raising questions and was informed about this application within approximately a week to 10 days of the initial contact. Third, there was the interest you had as a ministry official in this particular file.

The evidence put forward by ODC was that this was extraordinary, first, because it was a software marketer as opposed to a manufacturer--

Mr. St. Amant: A service-oriented company.

The Vice-Chairman: Right--and, second, because of the size, because it was the largest investment made. Do you agree with that testimony or was there anything else exceptional about this application that merited the special attention?

Mr. St. Amant: Looking at it in perspective, I am not sure to what degree, from my perspective, Graham got special attention. I was getting tons of inquiries from people who were dealing with the IDEA Corp., wanting to know what was going on with their projects.

In terms of Graham Software being unique in the sense that it was service marketing, it was an infrastructural type of support organization for developing a broader industry, it did deserve some special attention, I think, both from a policy perspective in relation to the corporation's role with the government and from the perspective that it is important that projects like this ultimately succeed, because they are going to build the base of your broader industry.

The Vice-Chairman: Do you recall inquiries about this particular file coming to you from your superiors or others in the government? Was there concern or interest expressed about this particular file that you can recall?

Mr. St. Amant: To be frank with you, our knowledge of what was at the IDEA Corp. was very general or quite limited. I understand Mr. Barnes received the minutes of the board; I do not know to what extent he had contact with people beyond that. But I know in my own case, I did not receive any inquiries during the period I was at the IDEA Corp.

The Vice-Chairman: Prior to the problems becoming evident in a public sense, you were not alerted by anybody by being told, "Watch this one," or "We think there may be a problem or a special situation that merits your attention"?

Mr. St. Amant: As our course of analysis evolved--I am thinking now of later in April, towards May--we were going through the process of interviewing the staff in terms of these investments and getting their opinions. One or two staff expressed a concern about IDEA being involved in a service-type company because it was beyond the normal type of activity.

The Vice-Chairman: Several IDEA staff expressed concern about the investment in this type of venture?

Mr. St. Amant: The fact that it was a service company as opposed to a product-oriented venture.

The Vice-Chairman: What was the response to the staff concerns?

Mr. St. Amant: By that stage, the investment decisions had been made and it was our responsibility to ensure that ultimately when the transition took place it was effectively managed and to deal with it in an appropriate way.

The Vice-Chairman: If we take the testimony put before us by the IDEA officials, which indicated staff members expressed concern about this application after the initial contact, it is fair to say that your testimony would be that those staff concerns continued to surface as recently as April or May of last year?

Mr. St. Amant: Yes.

The Vice-Chairman: Thank you.

Mr. Ferraro: I have a couple of questions. The first one carries on along the line of Mr. Gillies's questioning. Notwithstanding your misspent youth when you worked with the Progressive Conservative Party, there have been indications that something is not right in Denmark. I ask you quite candidly, in your capacity as an employee of the Ministry of Industry, Trade and Technology, were you in any manner, either indirectly or directly, either strongly or not so strongly, coerced or pressured to treat the Graham Software case any differently than you would any other file you had to deal with?

Mr. St. Amant: I never received any pressure from anybody to do anything relative to the IDEA Corp. file with the exception that the person I reported to, Mr. MacKinnon, wanted detailed information on the structure of the portfolio.

1500

Mr. Ferraro: That would be normal, I suspect.

Mr. St. Amant: Yes. Outside of that, nobody ever--

Mr. Ferraro: No politician in this government or any other government or any opposition member ever called you about this?

Mr. St. Amant: About Graham?

Mr. Ferraro: Yes.

Mr. St. Amant: No.

Mr. Ferraro: I want to talk about your immediate supervisors and people in the Ministry of Industry, Trade and Technology in particular. Did anybody do anything that normally would not be expected in the proper functioning of the ministry or ask you to do anything that was untoward as to your normal duty?

Mr. St. Amant: No.

Mr. Ferraro: In other words, in the proper functioning of your responsibilities as an employee of the government, the Ministry of Industry, Trade and Technology, there was nothing improper?

Mr. St. Amant: As far as I could see. Mr. Graham got no special treatment.

Mr. Ferraro: And you were not subjected to any special influence--

Mr. St. Amant: No.

Mr. Ferraro: --to treat him any differently?

Mr. St. Amant: No; and I do not see why I would have been.

Mr. Ferraro: Thank you.

The Vice-Chairman: Mr. St. Amant, thank you for appearing. The committee appreciates your time and trouble.

The next witness is not scheduled to appear until approximately 3:45. Is there any other business any member wishes to bring forward?

Mr. Ferraro: Can you get him here a little quicker?

The Vice-Chairman: We can try. You have to appreciate that Mr. Barnes, who is the deputy minister now, was called on very short notice. My latest information is that he is going to be here at 3:45, and he has about half an hour to spend with us. I am sure he would want to co-operate with the committee, and if we want more time with him, we will have to schedule some more time.

Mr. Philip: Why do we not deal with the subcommittee's report now?

The Vice-Chairman: Is that the wish of the committee? We could certainly do that now.

Mr. Epp: We have it before us. I presume Mr. Philip is suggesting we deal with the recommendations for our scheduling later on.

The Vice-Chairman: It is this committee I understand that we should be looking at. Okay. We will move to that then. For people who are watching the proceedings for the Graham matter, we will resume at approximately 3:45. We are not going in camera. You are welcome to stay if you wish, but this may not be of particular interest.

Has everyone got the report of the subcommittee in front of him? It was distributed by the clerk this afternoon. I am open to discussion on it now. Who wishes to make any points on it?

Mr. Philip: I would just recommend passage of this, subject to the usual problems that if any unforeseeable urgent business comes up, it would have to be dealt with. Basically, the subcommittee felt that since we had witnesses scheduled for the courthouse hearings, we should try to deal with that on Thursday afternoon and Friday. I do not know whether we will get through the whole thing, but at least it would be useful to try to deal with that matter.

The Vice-Chairman: I was not at the subcommittee meeting. Was it the subcommittee's feeling that we could deal with this matter in one and a half days, or are we going to be scrambling for more time?

Mr. Philip: On that matter, the problem we have is that we do not know what the Attorney General is going to report to us when his officials appear. You may recall that after Mr. McAuliffe's exposés, if you want to call them that, or reports on CBC Radio concerning the courthouse situation and following my motion that was passed in this committee for an inquiry into the courthouse situation, the Attorney General called for his own inquiry. I believe he has developed a five-year plan of action. If that plan of action is in place and if the report is in place, I think it would be reasonable for the committee to ask for that, and we may want to deal with it.

If we are dealing with it in addition to the witnesses we have, then we are not going to do it in a day and a half. It is subject to what answer we are going to get from the Attorney General's officials at two o'clock tomorrow.

The Vice-Chairman: Okay.

Mr. Epp: We have a report which has been provided to all members with regard to the courthouses. It seems to be fairly extensive and fairly exhaustive with respect to the concerns that this committee has raised. The auditor has had an opportunity of having a considerable amount of input there and it would be my feeling that we could deal with this matter in a fairly rapid fashion and, hopefully, finish by Friday afternoon. Unless there are some surprises that I am not aware of, I think we should be able to finish that by Friday. That is why the committee yesterday thought that we should extend the Graham Software hearings for another half day and take that off the courthouses, because we wanted to deal with both items if we could.

The Vice-Chairman: Certainly, it is open to any member of the committee if, come Friday afternoon, it is evident that we need more time on the courthouse matter, any member can request it. Unless there is any further discussion, I will put the question as moved by--

Mr. Hennessy: Just one thing for my own satisfaction. You have Thursday, March 26, and I do not see anything else. On March 27, there is nothing on this agenda I have here.

The Vice-Chairman: Okay. That is because March 27 was not amended. We are still sitting on March 27, but all you see before us are new sitting times.

Mr. Hennessy: March 26 and March 27?

The Vice-Chairman: Yes.

Mr. Hennessy: On March 27, in the afternoon also?

The Vice-Chairman: Yes.

Further discussion if any?

The question is moved by Mr. Philip for adoption. All those in favour?
Carried.

There is actually another item of business I would like to bring forward. We requested this morning--Mr. Philip, your request--that we seek a legal opinion on the question of--I am sorry, Mr. Ferraro--conflict of the IDEA official. Our hard-working clerk has been in touch with the office of the legislative counsel. They feel it is not within their mandate to undertake

such an inquiry for us. They are more concerned with the drafting of legislation, etc. They have suggested to us two possible courses of action. One would be that we seek an outside expert legal opinion from someone who has knowledge and reputation in this area. In the alternative, we can ask for an opinion from the crown law office which would be the civil law people at the Ministry of the Attorney General.

I put those two options before you. The one caution expressed by legislative counsel, and I think it is a legitimate one, is that neither of those courses of action is engineered to give us a quick answer. In other words, if we start this, if we want this answer, we want a lawyer to put his or her professional reputation on the line with a full and proper opinion, it is going to take some time.

I ask the committee what we should do.

Mr. Ferraro: If I can just comment, I did not realize the overall ramifications of getting an opinion. I think the committee is going to make a recommendation, basically, on whether a conflict-of-interest situation existed or not. At least I assume that is what the committee will do. I just wanted to make sure that the committee covered all the bases and got all the information available in order to make a bona fide and, I suspect, more substantial statement. I think, having considered the degree of difficulty in getting an opinion, that in all probability it is a subjective thing anyway, only to be determined by a court of law when and if it is contested. Perhaps the committee in its own right is fully substantiated and covered by making any recommendation in that regard without legal opinion.

Mr. D. W. Smith: When you say it takes so much time to develop an opinion by a lawyer, you have it down here that we would not be meeting until May 7 or May 14. How much more time do you feel that it would take them to develop that opinion?

The Vice-Chairman: You are quite right. Two points, Mr. Smith: First, I am corrected by the clerk. It was his advice on the piece of paper I was handed that this would take time, not legislative counsel's advice, so I stand corrected. We can do it. If you want, we can call the crown law office this afternoon and try to get an estimate of how long it would take. Just because legislative counsel will not do it, I do not want to try to dismiss the idea, Mr. Ferraro. I was just telling you what is going on.

1510

Mr. Ferraro: Why do we not find out?

Mr. D. W. Smith: That is at least six weeks away, if not seven.

The Vice-Chairman: We could probably do it. I am just guessing. It could probably be done.

Mr. Hennessy: Why not do it then?

Mr. D. W. Smith: Follow up just a little further and find out what it would take in time.

The Vice-Chairman: Okay.

Mr. Philip: My only comment on that is that I think the members of

this committee are in as good a position to read the code of ethics--or whatever the official thing was called--as easily, as comprehensively and as understandably as any lawyer can, and I am not sure that a lawyer's opinion is any more valid or, indeed, as valid as 12 members of this committee who have had these hearings and looked into this matter. I have no objection to getting an outside legal opinion if somebody wants it, but I fail to see what it achieves.

Mr. Epp: To be fair with both the gentlemen whose names have been mentioned in this context of having a conflict or a potential conflict of interest, I think this committee owes them that fairness that we try to obtain a legal opinion on it. I would not want to be accused of having failed those gentlemen and I am not out to protect them in any way more than anyone else, but I think the elected members of this Legislature owe it to the public and to anybody who appears before this committee or any other committee of the Legislature to be fair. I fully support Mr. Ferraro's suggestion that we get a legal opinion. I think it is an excellent suggestion. I think we should act fairly quickly on trying to obtain that. I think we owe it to those two people.

Mr. Hennessy: I share the opinion, Mr. Epp. The idea is that you are dealing with people's futures, their lives, to some extent. We are not jury and executioner, or whatever it may be and everything to that effect. I think that anybody with a good lawyer could come back and say: "Look, have any of you people got a law degree? How can you make a decision like that?" We may think we are smart. We are not as smart as we think we are. You find that out when you lose. I would just say, with all due respect, I would go for the best opinion on the matter.

The Vice-Chairman: Why do we not have the clerk make a call to the people in the crown law office and see what they can do for us, what the approximate time frame is and we will report back to the committee.

Mr. Philip: Let me just conclude by saying this. I do not think you need a degree in law to be able to read English and I think the members of the committee can read English as well as any lawyer. I do not think, as a committee making essentially what is an interpretation, that it is our responsibility to slough off our responsibilities on some technocrat.

Interjections.

The Vice-Chairman: Listen, anyone can comment. I really wonder if this is going anywhere. I sense a decided majority opinion on the committee that we seek an opinion and I am going to instruct the clerk to do so. Mr. Ferraro, one closing comment.

Mr. Ferraro: I just want to say that I wholeheartedly disagree with Mr. Philip once again. It may be his opinion that you can, as a politician, whether in the House or in committee, make innuendoes or allegations about people and their reputations, but I think if we have learned one thing from the proceedings so far, quite frankly, it is that we better be a little more careful before we start spouting off at the mouth. In order to protect their reputations, I think we better get a legal opinion.

Mr. Philip: On a point of order--

The Vice-Chairman: I would really like to wrap this up. I wonder how much good this is doing us, but I have a point of order, which is the last one I will entertain on this subject.

Mr. Philip: On a point of order: Mr. Ferraro said that I was guilty of making innuendo. I did not make any innuendo. I was fairly clear. I stated in no uncertain terms--and if you were able to read English you would have come to the same conclusion--that there was a clear conflict of interest by those two people. There was no innuendo. There was a clear statement. There is a conflict of interest.

The Vice-Chairman: I think we will wrap this particular subject up with our instructions to the clerk to seek a legal opinion. Are there any other different--and I stress different--items of business that we should consider before perhaps taking a bit of a coffee break before Mr. Barnes comes in?

Mr. Philip: On the schedule for tomorrow, instead of simply starting in by calling witnesses, I would like an opportunity to question the Provincial Auditor and those who prepared the report on the courthouses. I find there are certain errors in the report and I want to question who was interviewed and how the report was prepared.

Mr. Epp: On that suggestion, is the auditor to appear here as an adviser to the committee or is he to appear here as a witness? I do not know whether he is going to be sitting up there or down here, and I think it is fair to Mr. Philip to try to make this very clear to the committee because it looks like he is out for blood.

The Vice-Chairman: It is up to the committee whether we want to take the time to go over the report with the auditor. It would certainly not be unprecedented for us to sit and question the auditor here about a report that he has brought before us. We do that all the time.

Mr. Epp: I prefer that he be there.

Interjection: I think it is generally in camera.

The Vice-Chairman: Generally in camera. I will put that to the committee before we make a decision on this. Do you have any comment you would like to make?

Mr. Archer: I have no objection to discussing it. I think it would be preferable to try to iron these matters out in camera, but if you want to do it in public, that is fine with us.

Mr. Ferraro: I think it should be in public.

The Vice-Chairman: There are two questions here. The witnesses currently scheduled for tomorrow afternoon are the deputies and assistant deputy ministers from the Ministry of the Attorney General and the Ministry of Government Services.

The first question I will put to the committee is, do we wish to spend some time with the auditor prior to hearing those witnesses? Let us try to do it item by item with a show of hands.

Mr. Philip: Maybe we can define the process. My proposal would be that the auditor be given an opportunity to introduce the report as he always does with any report, and then answer any questions for a period not exceeding 20 minutes for any member.

Mr. Epp: Is that at 10 o'clock tomorrow morning?

The Vice-Chairman: No. That is 2 p.m. tomorrow afternoon because tomorrow morning we are still on Graham Software.

Mr. Philip: When I say this, I want to make it clear that my concerns are not with a lot of the specifics. I think the auditor has confirmed a lot of the specifics and the allegations that I had made originally. I am sure that Mr. Archer has no trouble sleeping at nights no matters what happens, but I am concerned about some of the terminology used and some of the conclusions. That is why I want to ask some specific questions about who he interviewed and so forth.

Mr. Epp: On this particular point, I think it would be advantageous to try to deal with the Graham Software issue before tomorrow noon hour. My suggestion would be, if that is the case, why do we not sit at nine o'clock to hear the auditor and get that over with, or at 9:30 if it is not going to take anymore than half an hour, and then hear the other witnesses or hear the other witnesses first and then deal with him, and then get into the courthouse thing tomorrow afternoon, rather than have the people on the courthouses waiting here all afternoon while we are dealing with the auditor. That could go into half an hour, an hour or an hour and a half, and that is not fair to everybody. As a government and as members of this Legislature, we should try to save money and not try to keep people waiting here while we are dealing with something that we could deal with in the morning.

I would make that recommendation. I will amend the motion that we sit at nine o'clock tomorrow morning and deal with the auditor at that time, or with the concerns that Mr. Philip has.

Interjection: Make it 9:30.

Mr. Epp: I will make it 9:30. That is a good suggestion.

The Vice-Chairman: I have no doubt that we can wrap up Graham Software quite nicely tomorrow morning. Do you agree with me? All we are doing tomorrow morning is hearing Mr. Cannon, questioning him and then three 15-minute closing statements with no questions, please. This is not another round of going after them. The way I see it, it is their opportunity to wrap it up. I do not see any difficulty in our being through by noon.

Mr. Epp: In conjunction with that, I suggest that we hear them in the order in which they appeared before us most recently; in other words, we had IDEA Corp., Graham Software and then the Ontario Development Corp.

Mr. Philip: The normal procedure is reverse order.

The Vice-Chairman: Yes. I suggest that we should hear them in the reverse order to their original appearance. That would seem to be the fairest.

Mr. Epp: That is fine.

The Vice-Chairman: First, are we agreed that we wish to spend some time with the Provincial Auditor on the courthouse report?

Mr. Philip: Yes, but I have some concerns about splitting it up. I think the people who are coming, including the people from the office of the Attorney General, have scheduled some time, and anything dealing with the

report should be dealt with while they are here. It is only fair. It is not fair to advise the Attorney General's staff that, suddenly, we are going to deal with this matter initially at 9:30 a.m. and to do that at 3:20 this afternoon. I do not think we are going to have a lot of questions initially. We may have some questions after we have heard some of the witnesses, and I think the witnesses will have some questions.

1520

The Vice-Chairman: It is pretty straightforward.

Mr. Philip: Why not keep the schedule as agreed to.

Mr. D. W. Smith: Start at 1:30 p.m. tomorrow.

The Vice-Chairman: It is a pretty straightforward question, gentlemen. Why do we not do it by a show of hands? Who wants to do it at 9:30 a.m. tomorrow? Three. Who wants to do it at 1:30 p.m. tomorrow? Three. Who does not want to do it?

Mr. McLean: I will not be here.

The Vice-Chairman: It looks like I will have to break it. The funny part is I do not care. I will do it either time, really.

Mr. Hennessy: Toss a coin.

The Vice-Chairman: I am going to vote for 1:30 p.m. simply because then we would have done it right before the questioning the witnesses, and maybe it would be a bit fresher in our minds. Okay? That is 1:30 tomorrow afternoon.

Mr. Hennessy: That does give us more time.

The Vice-Chairman: There is one more decision before we break. There is another point before we break it up. That is 1:30 with the auditor, in camera or in public?

Mr. Epp: Mr. Ferraro suggests we make it in public.

Mr. Hennessy: What does the auditor want?

Mr. Archer: I will do it either way. It just seems to me as a matter of procedure, since we work in effect for the committee, that if the committee has some differences with our report, it would be best to discuss them in camera, but whatever the committee desires.

The Vice-Chairman: Unless there is further discussion, I am going to do it by a show of hands again.

Mr. Philip: May I make the comment that any differences of opinion that the analogous committee on the Ombudsman has are usually aired in public, and I do not see why not.

Basically, my differences may be in terms of who he may have interviewed and whether there are still some other people who need to be interviewed in order to get at the facts. That is not a criticism per se of Doug himself--he did not do the report--but it may be in terms of process and

so forth. I do not see the Provincial Auditor's office suddenly falling from the sky as a result of our dealing publicly and openly with this tomorrow.

The Vice-Chairman: We will have a show of hands. Who wants it in the open? Who wants it in camera?

It will be a public session, with Hansard, at 1:30 tomorrow. We will take a break now until 3:45.

The committee recessed at 3:25 p.m.

1551

The Vice-Chairman: We will come to order. I am sure the other members are on their way. Could I ask Mr. Barnes to come forward. Mr. Barnes, we appreciate your being able to appear on such short notice. We also appreciate that you have other commitments; so we will get this going as expeditiously as possible. Do you wish to make any remarks?

Mr. Barnes: No. I am in your hands.

The Vice-Chairman: Okay. Questions?

Mr. Epp: Mr. Barnes, maybe you can very briefly give us your involvement with the government in your various roles during the last few years, and then I want to ask you about your involvement with this file regarding Graham Software Corp.

Mr. Barnes: Up to 1982, I was assistant deputy minister of operations in the Ministry of Community and Social Services. In March 1982 or July 1982--I am trying to remember; I think it was in July 1982--I was appointed general manager of the technology centres, which position I held until I guess it was January 1--I am trying to remember--1984, when I was made assistant deputy minister of innovation and technology within the Ministry of Industry and Trade. I went back to Community and Social Services on September 14, 1985, as deputy minister.

Mr. Epp: With regard to the Graham file, how did you become involved in it and what was your involvement?

Mr. Barnes: My involvement was absolutely negligible, as far as I am concerned. I was aware of them as a software company and I was aware they had approached the IDEA Corp. Having been called and recognizing what it was about, I have been thinking about this; the best recollection I have is that the IDEA Corp.'s major concern with us was whether or not the investment in what was a unique situation, i.e., a marketing-type approach, was appropriate as distinct from investment in a product.

Mr. Ferraro: If I may ask a supplementary, did you say they approached the IDEA Corp.?

Mr. Barnes: I assume they did. I have no idea. The IDEA Corp. contacted me regarding it. That is all I am saying.

Mr. Ferraro: I see. Okay.

Mr. Barnes: I have no idea who approached whom. I am just saying that is how it came up.

Mr. Epp: In fact, it was reversed; Mr. Douglas has testified that he approached Graham.

Mr. Barnes: He may have done so. I have no knowledge of that.

Mr. Epp: During your sojourn with the Ministry of Industry, Trade and Technology, you served on the board of Graham Software?

Mr. Barnes: No.

Mr. Epp: You did not serve on the board at all?

Mr. Barnes: No. On the IDEA Corp.

Mr. Epp: You were on the board of IDEA but not Graham.

Mr. Barnes: From about February or January 1985.

Mr. Epp: That is the extent of your involvement with--

Mr. Barnes: With IDEA Corp.?

Mr. Epp: With the Graham file--what you have just indicated?

Mr. Barnes: Yes. Absolutely.

Mr. Epp: I guess the only reason you came before us here is that your name came up in some fashion yesterday. I forget who raised it. That is why you have had to try to rearrange your schedule so you could appear before the committee.

Mr. Barnes: I do not think I can help you very much on Graham, quite frankly. There was an issue around investing in a marketing item as distinct from a product.

Mr. Epp: Let me ask you a question that one of my colleagues sometimes asks. That is, during the time you were involved with the Graham file, was any political pressure put on you to give any particular favouritism to this file as opposed to others or was any political pressure put on you by anyone, either in the previous government or in this one, in order to treat this file any differently from any others?

Mr. Barnes: I came before this committee earlier this year--last year, actually--and I thought about it and made a very specific statement, which was that I was proud that in the Ontario government no one had ever put any political pressure on me to do anything in any job I have held, particularly in relation to the IDEA Corp. I say that, I stand by that and I am pleased by that. Absolutely not.

Mr. Epp: Thank you.

Mr. Sargent: How many members were on the IDEA Corp. board?

Mr. Barnes: I think it was 15, if I remember rightly.

Mr. Sargent: How long have you been on the board?

Mr. Barnes: I am not on the board. I was on for about nine months.

The Vice-Chairman: The board wound down in June 1986.

Mr. Barnes: Yes. I think what happened was that when I left Industry and Trade to go to Community and Social Services, I informed them that I would not be attending any more board meetings. I think the last board meeting I attended was in June or July 1985. I said I would not be attending any more board meetings after that. But my name was not actually struck off the board until the end of the year because there was an issue of whether it was worth taking it off, changing the order in council, around how long IDEA would continue and so on at that time.

Mr. Sargent: Thank you.

The Vice-Chairman: I have a couple of questions. The testimony before us by IDEA officials yesterday suggested that you--I cannot remember whether they said you were contacted or you contacted them; I assume they contacted you very shortly after the initial contact with Graham. I want to ask you what the nature of your interest was in the company. Was it that they were going to be dealing with a marketer as opposed to a manufacturer?

Mr. Barnes: Let me put this into context for you. There was no specific interest by me in Graham. At the beginning of May 1984, we held a software conference which came out of a report that our division had written on the future of software and the problems of software in Ontario. We were concerned that we were losing far too many people to the United States. We were concerned that we were not writing enough software. We were concerned about the software industry, and it looked like a good opportunity.

The report we got back, if I remember it correctly--this is a very brief summary--basically said that whilst we had people very capable of writing software and whilst we had a lot of small, good organizations, they did not have any marketing capacity at all and were losing out very significantly to the US--the products were going down to the US and being marketed--and if there was anything we could do in Ontario to support, create or help develop a software industry, it would be through marketing.

We had a conference on that subject. I am sure people from IDEA were at that conference, and I am sure I would have discussed the subject with people from IDEA. In terms of the context of Graham, I have to assume what happened was that they were one of the first ones to come in with this concept of marketing, and then we were approached as to whether or not we would consider this as an appropriate investment.

At that time, we were looking very closely at the mandate of IDEA, and the whole issue of the sorts of products--this is not a product, this is marketing and so on--would have been a subject of discussion.

The Vice-Chairman: That leads to my next question. The IDEA mandate as drafted really did not allow for investing in a marketing company, or did it? My reading of it was that it was for the development of new technology, which suggested research, development, manufacturing.

Mr. Barnes: That is a fair comment. We all have to realize that when the mandate was first written, I do not think there was anybody around who knew anything much about how to develop technology in Ontario, since there was very little being developed and marketed; it was very much product-oriented. It was only latterly we started to come to the realization that this had to be handled in a holistic manner. In other words, there needed to be damned good

management, damn good marketing, and little players in a big lake were probably going to be eaten by the sharks. Therefore, this needed to be looked at in a broader context. In the area of software, which IDEEA had identified as being a major area, it was felt that this would be an appropriate way to go.

The Vice-Chairman: So the decision was taken within the ministry?

Mr. Barnes: "Decision" is too big--we said we did not think this would be wrong. We thought this would be a good idea as long as it furthered technology.

The Vice-Chairman: Advice was offered that you thought this was a good thing?

Mr. Barnes: That is right.

The Vice-Chairman: It may not precisely fit the original criteria, but it was--

Mr. Barnes: Exactly. We certainly had a report that said this was the route to go. In other words, we had the software report. The software conference was saying that marketing was the best thing we could support.

The Vice-Chairman: Do you recall prior to your leaving--I want to get the two dates down; you left the Ministry of Industry and Trade when?

Mr. Barnes: September 14, 1985.

The Vice-Chairman: You left the board when?

Mr. Barnes: I am not sure when my name was taken off the board; I am not sure when it ceased to be on the order in council. I did not go to a board meeting in September because I had left; I do not think there was one in August. To the best of my recollection, it would have been July or June that I last went to a board meeting.

The Vice-Chairman: So any of the problems, financial or otherwise, associated with this company anteceded your presence by quite a period of time?

Mr. Barnes: Exactly.

The Vice-Chairman: Other questions? No. Thank you.

Mr. Barnes: Thank you. That was nice and quick.

The Vice-Chairman: That completes the committee's deliberations this afternoon. We will sit again tomorrow at 10 a.m.

The committee adjourned at 4:03 p.m.

CA20W
XC21
-P73

P-66

Government
Publications

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.

THURSDAY, MARCH 26, 1987

Morning Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Sargent, E. C. (Grey-Bruce L)

Smith, D. W. (Lambton L)

South, L. (Frontenac-Addington L)

Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South

Gregory, M. E. C. (Mississauga East PC) for Mr. Davis

Hennessy, M. (Fort William PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor

Leishman, K. W., Executive Director, Reporting and Special Audits

Cannon, G., Former Acting Vice-President, IDEA Corp.

Douglas, W., Former Senior Manager of Investments, IDEA Corp.

Blakley, H., Former President, IDEA Corp.

From Graham Software Corp.:

Wigdor, R. J., Legal Counsel and Secretary

Graham, T. D., President

Wawrew, K., Executive Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, March 26, 1987

The committee met at 10:08 a.m. in room 15J.

GRAHAM SOFTWARE CORP.
(continued)

Mr. Chairman: Come to order, please.

The first witness appearing before the committee this morning is Geoff Cannon, former IDEA official. Mr. Cannon, come forward, please. Welcome back to the committee. Would you like to make any comments before we get into questions from members of the committee?

Mr. Cannon: No, I do not think so.

Mr. Chairman: All right. We will lead off with Mr. Gillies.

Mr. Gillies: Can you give us just a bit of background? You were with the IDEA Corp. as a vice-president.

Mr. Cannon: I was with the IDEA Corp. as an acting vice-president.

Mr. Gillies: Acting vice-president. You started with them at what time?

Mr. Cannon: Maybe I should clarify one thing and that is, as an acting vice-president that means I was never an employee of IDEA Corp., but was, rather, an outside consultant to IDEA Corp., and I began my consulting work with IDEA Corp. in April 1985.

Mr. Gillies: April 1985, and then you remained with the corporation until the wind-down on June 30, 1986?

Mr. Cannon: That is correct.

Mr. Gillies: Okay.

Mr. Ferraro: Would you like to explain that, how you can be an acting vice-president?

Mr. Gillies: I intend to get into that. Do not worry.

Mr. Ferraro: I am sorry. I did not mean to pre-empt you.

Mr. Gillies: I would like to come back to that point. Can you tell the committee, as of your starting with the corporation in April 1985, what was the history of your relationship with Graham Software Corp. in terms of when you first became aware of its submission for funding, what dealings you had with it, and so on, through until the wind-down?

Mr. Cannon: I am sorry, were there two parts to that question?

Mr. Gillies: Yes. Really, what I want to know is, in terms of your being an officer or acting officer of IDEA, what did you do with the Graham Software file to the best of your recollection?

Mr. Cannon: Essentially, IDEA Corp. was divided into two streams; the venture investment group, of which I was the acting vice-president, and the pre-venture group, of which my partner, Daryl Logan, was the other acting vice-president. Graham Software Corp. fell on my side of the line and, therefore, as the acting vice-president, I had the overall responsibility for that investment.

Mr. Gillies: So you would have assigned one of your subordinates to work in a detailed fashion with this company and that person would, in turn, have reported significant developments to you as superior.

Mr. Cannon: The way we were structured, I would have had analysts working with me who basically prepared the bulk of the analysis and I reviewed the analysis. That is correct.

Mr. Gillies: To the best of your recollection, what was the first you heard of the possibility of funding the Graham company and to the best of your recollection also, what was the nature of the initial contact between IDEA and Graham?

Mr. Cannon: The latter question I do not know the answer to. What I can say is that shortly after I arrived at IDEA Corp. in the capacity of acting vice-president, the corporation, being IDEA, was already in discussion with one potential investee company called Micro-Master. I got involved in those discussions and it was through that corporation that IDEA Corp. became aware of Graham Software Corp.

Mr. Gillies: Can you tell us what the relationship or link was between Micro-Master and Graham?

Mr. Cannon: I can certainly tell you what the ultimate link was because we also made a direct investment in Micro-Master Corp. and simply put, Graham Software Corp. was responsible for being the marketing agent, if you will, of the product that was being developed by Micro-Master. So there was a direct relationship between those two corporations.

Mr. Gillies: Who were the officers of Micro-Master with whom you were dealing? Do you recall even the primary contact person?

Mr. Cannon: I can recall the name of one individual who was very active in the negotiations. His name was Herman Turkstra. I cannot recall the names of the others.

Mr. Gillies: During the course of dealing with this company, you became aware that its product was being marketed by a company called Graham Software, or was that a later development?

Mr. Cannon: That was a later development. It was through Micro-Master that we became aware of Graham Software Corp.

Mr. Gillies: Then through other evidence before the committee, we find that Mr. Douglas made the initial contact with Graham to see whether there could be an investment by the IDEA Corp. in Graham. That was in approximately August 1985, so you would have become aware of the possibility of an investment around that time?

Mr. Cannon: Back in August 1985 or so, we had virtually come to the conclusion that one of the voids that existed in Ontario was that there did not seem to be an outlet for good-quality, Ontario-developed software. We were already beginning our search to find out who in the province could pick up that back end and fulfil that kind of requirement. At that time, as I mentioned, we were having discussions with Micro-Master. Through Micro-Master, we became aware of Graham Software. Bill Douglas approached Graham Software directly to find out more about what it was doing.

Mr. Gillies: Who would you say originated the idea of IDEA approaching Graham? Was it Mr. Douglas's thought to do it, was it yours, was it Mr. Blakley's, was it somebody else within the government?

Mr. Cannon: To the best of my recollection, what I call the senior management group, Harold Blakley, myself, my partner Daryl Logan and Bill, discussed as a group fairly early on this overall requirement to do something for the software industry in Ontario. It was Bill, again at our request, who initiated the contact directly with Graham Software.

Mr. Gillies: You would have had dealings with the file on and off in your managerial capacity from August, at the time of the application for the contact, until you left?

Mr. Cannon: That is correct. I was responsible for it all the way through.

Mr. Gillies: We noted in the evidence that Mr. Douglas and yourself would make presentations to the board when required regarding the Graham file. That was part of your responsibility.

Mr. Cannon: That is correct.

Mr. Gillies: Let us move along now to the direct relationship you developed with Graham. At what time was the suggestion made that you do some consulting work for Graham Software and at whose suggestion was that done?

Mr. Cannon: Terry Graham, the president of Graham Software Corp., asked me in October 1985 whether I would be able to assist him with a specific project. The initiation was from Terry to myself.

Mr. Gillies: In October 1985 there was a project?

Mr. Cannon: That is right.

Mr. Gillies: Did you enter into a contractual agreement with Mr. Graham to undertake this project?

Mr. Cannon: I did.

Mr. Gillies: You signed a contract. Can you tell us approximately what you were paid to undertake that work?

Mr. Cannon: I was paid approximately \$4,600.

Mr. Gillies: That was in October 1985. How long did it take to do?

Mr. Cannon: I will answer that question specifically. I think it is important to understand what the nature of that project was. My hunch through

reading articles in the newspapers is that there may be some confusion as to what Terry Graham had asked me to do for Graham Software and what I did. Terry Graham asked me to perform a very specific service for Graham Software. He asked me to give him a hand in preparing an offering memorandum that would be used by Graham Software Corp. to arrange external financing for Graham Software Corp. That was in October 1985, approximately one or two months after we made the initial investment in Graham Software Corp.

1020

Mr. Gillies: It is an important point you raise. None of the work done on this October 1985 contract was intended to be put before the IDEA Corp. In other words, it was not looking for government financing, it was not a submission to the board of IDEA, it was with regard to external financing.

Mr. Cannon: Let me answer that. I will try to be as brief as I can. The short answer to that question is absolutely yes. The issue of preparing an offering memorandum to source or arrange for external financing is totally separate and distinct from preparing a submission to the IDEA board for financing for Graham Software.

At the time we made our initial investment in Graham Software Corp. of \$3 million in August 1985, it was not contemplated at that time that IDEA Corp. would be a provider of additional funds to Graham Software Corp. down the line. At the time I entered into the contractual arrangement with Terry, there was no discussion, and as far as I was concerned, Mazdamon, which was the second financing, did not even exist. That did not come up until towards the end of December, and I had already completed my component of the work on the preparation of the offering memorandum.

Mr. Philip: Would any of the contents in the external financing material have been used in the second application to IDEA Corp.? Is it not fair to say there would be a considerable overlapping of contents?

Mr. Cannon: No, absolutely not. I will tell you why. The offering memorandum that was used for external financing was a very in-depth report, probably 40, 50 pages, that would describe the history of the company, the industry in which it was participating, the products it had, the types of products it was looking to acquire, the kinds of things it was looking to do and also the financial condition of the company. The presentation to the board of directors of IDEA Corp. for the Mazdamon financing was simply a two- or three-page presentation that did two things: it described specifically and only the Mazdamon product, and also the financial condition of Graham Software at that time.

Mr. Gillies: The work on the October contract was completed when?

Mr. Cannon: What I agreed to do with Terry was to work on this project as and when time permitted. He understood that I was not in a position where I could simply block out a week or two from IDEA Corp. Therefore, it was basically weekends, evenings and so forth. The bulk of the work was done before the end of December and I think the last day I billed Terry was some time in early January. Typically, what I was trying to do was to put as much around the Christmas vacation as I could.

Mr. Gillies: You finished that one in early January. Were there subsequent contracts with Mr. Graham?

Mr. Cannon: Were there subsequent contracts?

Mr. Gillies: Yes. Did you do any more work for him of this nature?

Mr. Cannon: No. I completed my arrangements with Terry Graham at that point.

Mr. Gillies: It was from October to January, one contract in the amount of \$4,600?

Mr. Cannon: That is correct.

Mr. Gillies: You know the committee's concern, obviously, that as an officer of the IDEA Corp.--and I invite you to comment on any of this, but this is the way it looks to us--in undertaking contract work for a company with which you were dealing as an officer of the IDEA Corp., this put you in a conflict-of-interest situation.

Under the guidelines under which schedule 2 agency employees were to work, before contemplating any outside consulting work of any nature, an employee should have received the written permission of his superior, in your case Mr. Blakley, and even that having been done under the guidelines, you could still be found to be in conflict because of the nature of this consulting work, because (a) you were dealing with a company that you had some responsibility for as an officer of IDEA and (b) because of the paid nature of the work.

I ask you to respond to this. You have alluded to the relationship you had with IDEA being perhaps special because you were acting vice-president and hired on a consulting basis. That is the question. Can you disabuse us of the impression that is left that there was a conflict here?

Mr. Cannon: I can sure try and I am happy to be here to do that.

First of all, I would never attempt to suggest that because I was a consultant to the corporation and not an employee, I was therefore in a position essentially to do anything that I want, i.e., not comply with the corporate code of conduct. That is not the case. As far as I was concerned, my fiduciary responsibility was really one and the same, whether I was a consultant or whether I was an employee. In effect, coming back to an earlier question of yours, Mr. Gillies, that we did not pick up on, Daryl and I found ourselves in a situation where we ended up there virtually full-time. So my fiduciary responsibility was one and the same.

At the time that I agreed to do a specific project for Graham Software, that being to give Terry a hand in preparing the offering memorandum to source external financing, as far as I was concerned then and as far as I am concerned now, there was absolutely no conflict of interest for two reasons, and you have alluded to one of them.

Number one, and at the time I checked the corporate code of conduct, there is a specific provision within that that allows an employee or staff member to do consulting for investee companies if he receives the permission of his superior. That is the first thing.

You do not really leave it at that because then, as you suggest, you really want to get in and understand what the nature of that work is, or are you really just using that as an excuse to hide behind? I have told you folks

what the nature of the work that I did was and as far as I am concerned, I cannot think of any project that I could embark on that would be more consistent with IDEA's written mandate.

More specifically, and I will ramble just for a second here if I can, implicit in IDEA Corp.'s mandate was to invest in corporations that were promising on one hand, Ontario-based, and where we could provide a level of financing and a structure of financing that would in turn, hopefully, allow these corporations to go on and be picked up by the private sector. So anything I could do or anyone else could do to assist any investee company in accessing additional financing was to the benefit of IDEA Corp.

The specific financing structure we put in for Graham Software Corp. was a combination of common and preferred shares. The preferred share component, which was roughly 50 per cent of the total dollars we invested, carried with it a fixed rate of return of 30 per cent compounded per year. So from day one, Terry Graham and Graham Software Corp. was incented to refinance out 50 per cent of IDEA Corp.'s investment, because that is a very punitive rate of return.

It was deliberately set up that way because we were not permanent investors at IDEA. We were there to get them to the next stage. At the same time, contrary to what venture capitalists were suggesting we should be there for, we were in the return business. We were not loaning money. We were investing money. We wanted a decent rate of return for the degree of risk that we were assuming.

So when I embarked on the consulting project to help Terry prepare an offering memorandum that would be used to access external financing, as far as I was concerned and tying it back to the corporate code of conduct, I was doing exactly what the mission and the mandate of IDEA Corp. was set out to do.

1030

Mr. Chairman: Final question.

Mr. Gillies: I have some other questions but I will get back on the list.

I ask you to respond to the testimony of Mr. MacKinnon. Mr. MacKinnon said, and I hope I am paraphrasing accurately, that there would be nothing particularly unusual about an officer or an employee of an agency such as IDEA in doing some consulting work to assist a company with whom he was dealing, but where you get into trouble is when you are compensated for doing such work. In his testimony, he said he felt (a) that it was a conflict because of the compensation and (b) that it was unacceptable and had he known about it would not have entertained it within ODC anyway. In his testimony yesterday, he went so far as to say had he known of it he would not have taken you on the short-term contract that you undertook with ODC after the wind-down.

I ask you to respond to that specific point of view, that it is not that you did some consulting for Graham that is the problem but that you accepted payment for it.

Mr. Cannon: I obviously cannot speak for Mr. MacKinnon. Again, as far as I am concerned and as I have said before, I was not an employee of IDEA Corp. I was therefore not paid during periods such as the Christmas vacation. It was absolutely understood from day one with the board of directors of IDEA

Corp. that Daryl Logan, who is my partner, and myself were free and clear to do outside consulting because we were limited in that we were not receiving a salary and benefits from IDEA Corp.

When it came time to enter into the arrangements with Graham Software Corp., I saw and I see absolutely nothing wrong with being paid for performing that kind of service, because in the memo that I wrote to Harold Blakley, I was very specific. I said, "The nature of this request is more than I would be prepared to do for other investee companies." There are only so many days in the week, and if I was going to do it on weekend time and evening time, I was going to get paid for that. Terry Graham understood that. Harold Blakley understood that.

Mr. Gillies: Can I just ask, Mr. Chairman, do we have a copy of that memo from Mr. Cannon to Mr. Blakley?

Mr. Philip: I have onr.

Mr. Malcolmson: It is tab 47.

Mr. Gillies: Thank you.

Mr. Philip: I want to ask you a question which flows naturally from Mr. Gillies's question. Were you not at any time concerned about the appearance of your accepting this contract? When Mr. Graham approached you, did it not occur to you that it might either be or appear to be the purchasing of favour with IDEA Corp. in offering you and Mr. Douglas a contract?

Mr. Cannon: If I had agreed to do any work for Graham Software and be paid for it and not disclose it, that would be a conflict. That is under the table.

Mr. Philip: So you feel the only responsibility then is disclosure.

Mr. Cannon: No, two responsibilities, as I mentioned to Mr. Gillies earlier. One is that you disclose, and therefore I was complying with the corporate code of conduct. But almost more important is the nature of the work. It is not acceptable to simply disclose and hide behind that disclosure. What you have to do is say, "Is the nature of the work I am performing mutually beneficial to the investee company and to IDEA Corp.?" I think that is really what the spirit of that code of conduct captures, because if the code of conduct were simply interested in preventing you from consulting to an investee company, there would not be that specific provision that allows you to do it with the advice or permission of your superior.

Mr. Philip: Can you accept that there would be an ongoing situation between a venture investment company and those making decisions for that company and that there would be a conflict at certain times in the interests of the venture company and the interests of that company that is wanting to obtain loans or investment money?

Mr. Cannon: I am halfway there, but I got lost part-way through. I am sorry.

Mr. Philip: How do you divide yourself in half? How do you divide yourself as the person who makes decisions or recommendations saying, "Company X is going to get some of our money," and your responsibility as an employee or having a pecuniary interest in company X, which says, "We want the money"?

Mr. Cannon: I understand.

Mr. Philip: You cannot be both judge and defence attorney at the same time; otherwise, you have a problem.

Mr. Cannon: Let me try to answer it this way. As I mentioned at the outset, at the time we invested \$3 million in Graham Software, like every other investment we made at IDEA Corp., it was not contemplated that IDEA Corp. would invest further moneys in Graham Software. Therefore, at the time I agreed to perform this specific service for Terry, there was no contemplation of IDEA investing further money. I had the responsibility to monitor that investment and do whatever I could consistent with IDEA's mandate to bring them along. Again, I never found myself in a situation where I was splitting myself in half at all.

Mr. Philip: The real world is that later, when the additional moneys were required, you were in a position to influence that decision, were you not?

Mr. Cannon: When the second round came in?

Mr. Philip: Yes.

Mr. Cannon: By God, that was my responsibility; that was my recommendation to the board, that we invest in Graham Software, the second round.

Mr. Philip: Do you not see that in the eyes of the public there might be a conflict in that (1) you are receiving money from Graham Software and (2) at a later time, you are advocating they get more money from IDEA?

Mr. Cannon: No. I think they are mutually exclusive. If I had a carried interest in Graham Software, it might be something different; but I performed a specific service for them at the time when it was not contemplated that we would be investing any money later on. That service having been applied for Graham at the time when the Mazdamon product came around, it was a mutually exclusive situation.

Mr. Philip: Can you accept the reason why groups with a lot of experience in this field, such as the Interstate Commerce Commission in the United States, have passed laws and regulations saying employees or people in positions of authority may not accept contracts from companies with which they may be dealing not only while they are in those positions but also for a period of not less than two years? The federal conflict-of-interest guidelines, I believe, came up with a one-year moratorium on any advocacy or work on behalf of those companies.

The reason is that you cannot be part of a company without being swept up or acculturated in the ideas, enthusiasm, friendships and so forth related to that. If you are in a judicial kind of position, you cannot judge your close friends or close associates. There has to be some distance.

These things have not been dreamed up just to make life difficult for businessmen. The Interstate Commerce Commission tries to acquire the very best people; it takes them from the business world. You do not want to make things so difficult that you have trouble getting the best people and you get the leftovers from the industry. Notwithstanding that, they still have these fairly tough moratoriums, not just while you are operating in that capacity but for an extended period afterwards.

Taking that into account, do you not see that this principle holds true in this case and that in fact you were in violation of the spirit of that kind of thinking?

Mr. Cannon: Once again, I can say that I understand what you are saying, but IDEA Corp. had a very specific corporate code of conduct, and that is the one I had to be concerned about. I did not really have to be concerned about the Interstate Commerce Commission in the US. As long as I complied both legally and in the spirit of the corporate code of conduct, as far as I was concerned, there was absolutely no conflict. I see it that way today; I certainly saw it that way then.

1040

Mr. Philip: You do not see that under the code of conduct, which I have before me, your acceptance of a contract from Graham Software in fact gave you a private pecuniary interest in that company? In other words, you provided a service for them; if they were happy with that service, and happy with you and how you may have performed generally out there--out there maybe being in IDEA Corp.--then you get other contracts. Does that not give you a pecuniary interest?

Mr. Cannon: I had a direct interest in Graham Software to the extent that I received money for performing a specific service, and that is all I had. Again, when I reviewed the corporate code of conduct for IDEA Corp., what I was using within the corporate code was the specific provision that if I wanted to do this and it was also in the interests of IDEA Corp. to do this, what I needed to do was to get the permission of Harold Blakley, which I did.

Mr. Philip: Are you aware that the code of conduct also requires that Mr. Blakley should have discussed it with the board, and yet when we asked him, he did not even remember that you had accepted a contract with Graham Software?

Mr. Cannon: I can help you part-way. My recollection from reading the corporate code of conduct is that Harold was not required to discuss this situation with the board for a subordinate. However, if Harold himself as the president wanted to do something like that, then he required permission of the board as the president. That notwithstanding, the fact is that from day one, it was cleared with our board of directors for both my partner, Daryl Logan, and myself that we were free to do some consulting work wherever.

Mr. Philip: If it was cleared, why would Mr. Blakley not remember it?

Mr. Cannon: I cannot help you on that.

Interjection.

Mr. Philip: It was cleared as a general principle?

Mr. Cannon: That is correct. But I cannot help as to why Harold could not remember.

Mr. Philip: At the time you became vice-president, were you provided with the code of conduct?

Mr. Cannon: Yes.

Mr. Philip: Did you discuss the code of conduct with Mr. Blakley at the time at which you wrote the memo of January 2, or did you simply write the memo?

Mr. Cannon: I simply wrote the memo. I wrote the memo and I told him specifically the nature of the work I would be doing with Graham Software, because I said, "Notwithstanding what the corporate code of conduct says"--as I have said, I think the spirit is important; that is, what is the nature of the work you are doing; is that consistent with IDEA's mandate?

Mr. Philip: Part of the code of conduct is that no staff member shall divulge confidential information obtained as a result of his or her appointment unless legally obliged to do so. Are you not in a conflict? Being the vice-president, you would have inside memorandums, inside evaluations and inside information about Graham Software. How do you act as an employee--"employee" used in the loose sense--a contract employee for Graham Software and at the same time have that obligation of secrecy? Is there not a conflict in that?

Mr. Cannon: None whatsoever, as far as I am concerned, because the only thing I would have discussed with Terry Graham was Graham Software business. I was working on preparing a confidential offering memorandum for Graham Software to go to the marketplace.

Mr. Philip: Surely part of the confidential information that would be inside IDEA Corp. would be the evaluations, the appearances and the feelings about the qualifications of the people in Graham Software--

Mr. Cannon: Yes.

Mr. Philip: --the feelings about where the company was going or where it might not have been going and the feelings of anxiety that the company might be in trouble? At the same time you were preparing information, which would have to be glowing information, to go and get outside investors. Were you not in a conflict there in that certain confidential information to the evaluative process inside IDEA Corp. would invariably affect how you operated as a consultant for Graham?

Mr. Cannon: No, because the offering memorandum that would have been used to access external financing should not be a glowing report; it should be an accurate report of what is going on in Graham Software. It does not include in that any reference to the feelings of IDEA Corp. as its major investor. Anybody down the road who was considering or contemplating making an investment in Graham Software would be free to call me at IDEA and ask, "Do you guys support Graham Software or not?"

Mr. Philip: Would it not affect how hard you were looking for external money, the amounts that you would be asking for, depending on the inside information you had from IDEA Corp. as to how it felt at that time about Graham Software?

Mr. Cannon: I am sorry, I did not understand the question.

Mr. Philip: Surely you do not just go out after X dollars; you go out after a specific target for specific reasons.

Mr. Cannon: Right.

Mr. Philip: The impressions, the feelings and the evaluations that IDEA Corp. would have had around that period of time would surely have affected how much of a push you would put on to get that external financing, how much you would go after in terms of moneys on that external financing and so forth. Is that not the use of confidential information?

Mr. Cannon: No, it is not. Let me answer why. Again, when you go out to the marketplace with an offering memorandum, one of the worst things you can do is not portray an accurate description of the state of the company. The other thing you have to do, in addition to being absolutely clear on what the condition of the company is, you have to be very precise in terms of how much money you are going out to raise and what the use of proceeds is going to be, because the marketplace is sophisticated and the moment it perceives that you are accessing funding and you do not have a good use for it, your credibility disappears.

Mr. Philip: According to the Ontario Development Corp., they did not have a business plan. How could you prepare these documents for external funding if there was no business plan?

Mr. Cannon: If who did not have a business plan?

Mr. Philip: Graham.

Mr. Cannon: When did they not have a business plan?

Mr. Philip: According to ODC, they did not have right up until the time that they decided to close it down.

Mr. Cannon: Let me help you on that. At the time we made our initial investment in Graham Software, the \$3-million investment, we made that investment in part predicated on a business plan and in part predicated on a budget that we approved. I do not know how else you make an investment.

Mr. Wildman: ODC agreed with that. It said the absence of the business plan was one of the reasons it did not want to add any more money to the investment that had already been put in.

Mr. Cannon: I cannot respond to that.

Mr. Gillies: We have among our documentation a business plan for Graham Software.

Mr. Philip: Let me ask you one last question, and if I were in your position, I would be making this argument as well.

Mr. Cannon: It is my reputation, so it is understandable.

Mr. Philip: Notwithstanding that, if you feel that you were not in this instance in a direct, actual conflict of interest, in hindsight, do you not think it was a dumb political thing to do?

Mr. Cannon: A dumb political thing to do?

Mr. Philip: Yes, that it appears bad.

Mr. Cannon: I would say I am more comfortable being back in the private sector. What can I say? I mentioned earlier--

Mr. Philip: Substitute the words "bad human relations" if you do not want to use the word "political." We are all political. We do things that will eventually either help our careers or hinder our careers.

Mr. Cannon: Let me answer it this way. Today I would perform that same service for Graham Software Corp. or any other investee company that asked me to do it because it was absolutely consistent with our mandate. I think what I would do is maybe make sure that the whole world knew I was going to do it--not just Harold Blakley--before I would go forward. I think that is the best way I can answer that question, but I certainly do not think today, and did not feel then, that I was in any conflict of interest.

1050

Mr. Philip: I wanted to look at document 33, which is the Graham business plan. Perhaps the best thing to do is put me back on the list and I will deal with that later.

Mr. Epp: Welcome back, Mr. Cannon. I just want to continue on with this conflict-of-interest aspect. You indicated you felt one of the reasons you felt you did not have a conflict of interest was that you did not contemplate that Graham Software was going to be requesting any further money; in other words, it had the \$3 million and that was the extent to which it was going to be provided with funds from IDEA Corp., is that not correct?

Mr. Cannon: At the time we made the initial investment, we did not contemplate that IDEA would invest further funds in Graham, that is correct.

Mr. Epp: Therefore, you felt you were free to be a consultant to Graham because it would not be asking for any further funds and you would be somewhat removed from that in the future. Is that correct? That is what you indicated earlier. That was one of the reasons you gave for getting involved with Graham.

Mr. Cannon: Again, I would try to restate that. My acceptance of the consulting arrangement with Graham Software was based on the fact that doing that work for Graham Software not only benefited Graham Software but, in turn, was of mutual benefit to IDEA Corp.

Mr. Epp: Also, you indicated one of the reasons you did it was that you did not think they would be asking for any further money, that it was a one-shot deal and therefore you would not have a conflict. Is that correct?

Mr. Cannon: That is also correct.

Mr. Epp: If that is the case, then why would you, after having received payment from Graham of \$4,600, then involve yourself in a further financing for Graham? If you were not going to have the conflict because they were not going to ask for more money, you would have the conflict since they did ask for more money; therefore, you should not have participated in the decision-making of IDEA to provide them with more funds, because you had already received some remuneration from Graham. If it works one way, it works the other way. It is one of the aspects that you indicated earlier.

Mr. Cannon: At the time I accepted the consulting project, I said that we did not contemplate investing further funds. That is not to suggest that even if we did contemplate further funds, I would not do the same thing for Graham Software or any other investee company because, again, it was absolutely consistent with what we were there to do.

Mr. Epp: You indicated earlier that was one of the reasons. Anyway--

Mr. Cannon: I cannot answer it any differently.

Mr. Epp: You indicated in response to Mr. Philip, "The nature of the work I would be doing with Graham Software was to kind of provide some additional financing." You were trying to get private financing for Graham Software, right? That is what you were developing, to try to get them some private financing?

Mr. Cannon: That is correct. I was not providing it, but what I was doing was assisting him in preparing the document that hopefully would lead to his arranging for private sector financing, that is correct.

Mr. Epp: When you spoke to Mr. Blakley about getting permission to do this work for Graham, he gave you permission to go ahead and work with them. Is that correct?

Mr. Cannon: That is correct.

Mr. Epp: Is it not correct that you had already been working on the file for some months before you went to see Mr. Blakley?

Mr. Cannon: At the time that--No.

Mr. Epp: I want to draw to your attention the fact that in your billing procedure of January 20, the bill indicates that you started to work for Graham Software on October 10, 1985, and you did not inform Mr. Blakley until January 2, 1986.

Mr. Cannon: That is correct.

Mr. Epp: You had already almost finished the work before you informed him that you were doing it.

Mr. Cannon: That is not correct. What I had done--

Mr. Epp: It is right here, Mr. Cannon. Let me read it to you. It says:

"January 2, 1986. Terry Graham, president of Graham Software Corp., has asked and I have agreed to provide certain consulting services to Graham Software Corp. Given that these consulting services extend beyond the time I would normally commit to an investee company in my capacity as vice-president, venture investment, for IDEA Corp., I will receive a fee from Graham Software," etc. "Clearly, any additional time spent providing these services to Graham Software will not also be charged to IDEA Corp."

Mr. Cannon: Correct.

Mr. Epp: That is January 2, 1986, but your bill starts on October 10, 1985. You have already done most of the work by the time Mr. Blakley finds out, so how do you expect him to say, "You cannot do it"?

Mr. Cannon: Let me respond. At the time I accepted to do the work back in October, which was the first billing date, I received verbal permission from Harold Blakley at that point to do the project. Subsequently, I got a letter from Graham Software, I think from its legal counsel, saying:

"We understand that Harold has approved your doing this work. Please supply us, for our records, with something that carries his initial." At that time, I got it in writing.

Mr. Philip: May I have a supplementary?

Mr. Epp: I would, but I asked for one earlier and you rejected me.

Mr. Philip: No, I did not.

Mr. Epp: Yes, you did. I asked for one earlier and you said no. You just kept on going.

Mr. Hennessy: The goodwill boys.

Mr. Epp: I do not mind giving it to you, but if you want to play the game that way, then we can too.

Mr. Philip: I did not refuse you.

Mr. Epp: It is a question of credibility.

Mr. Philip: When you start winning your seat by as much as I win mine, then you will have some credibility.

Mr. Epp: Mr. Cannon, as you know, from October 24, after the statement by the Treasurer (Mr. Nixon) in his budget of October 24, you knew that IDEA Corp. was going to be wound down. You were also on a consulting basis. Was there any talk between you, Mr. Logan and Mr. Blakley of going into business after IDEA was wound down, maybe doing some consulting business for other firms?

Mr. Cannon: After IDEA Corp.?

Mr. Epp: Yes, after it wound down or after you left IDEA Corp. Was there any discussion about forming a consulting firm with either Mr. Logan or Mr. Blakley after that period, or doing some joint consulting work?

Mr. Cannon: Let me help you very specifically. I mentioned that Daryl Logan was the other acting vice-president at IDEA Corp. Harold Blakley brought Daryl and I in together. Daryl and I were already partners in a partnership before we came to IDEA Corp. and we returned to that partnership once we left IDEA Corp. So it was contemplated that Daryl and I would continue on and get back to doing what it was we wanted to do.

Mr. Epp: Was there any contemplation that you might be doing some consulting work with Graham Software in the future on a more extensive basis?

Mr. Cannon: Terry Graham asked me, probably at about the same time that I did the initial work for him, whether I would be interested in discussing with him the possibility of working full-time for Graham Software, and I declined to do that, because that was not consistent with what Daryl and I were going on to do.

Mr. Epp: You wanted to have your own consulting firm and so forth?

Mr. Cannon: Daryl and I do not consult now, but we were looking to do something different in the partnership, that is correct.

Mr. Epp: In recommending any additional financing for Graham Software, do you think by originally having accepted some \$4,600 from the company, it could in any way have been in the back of your mind that if you extended another \$2 million of IDEA money to Graham, maybe that would help you get additional contracts with Graham in the future in your consulting capacity?

1100

Mr. Cannon: No.

Mr. Epp: In other words, I am trying--

Mr. Cannon: I understand what you are trying to speak to there.

Mr. Epp: If you are going to take the money from Graham in one case and you might do some consulting for him in the future, it is quite easy to give him additional money now so he can scratch your back a little later on.

Mr. Cannon: No.

Mr. Epp: That would not have been in your mind at all?

Mr. Cannon: No, it was not. I really was not looking for additional work at that time. I was not looking for additional fee income from Terry Graham or anyone else. We were basically flat out at IDEA. There happened to be a situation with Graham Software where the request went beyond what I normally did for the other investee companies, and I was darn well going to get paid for working weekends and evenings, but that is not something I was looking to continue to do.

Mr. Epp: Do you think that could have been in the mind of Mr. Graham when he hired you, that he was going to ask for additional financing? Did that discussion ever arise between you and him or between other members of the corporation when you were working for him in October, November, December, that he was going to ask for additional financing and get it two or three months later by \$2 million?

Mr. Cannon: I cannot respond as to what was in his mind, but I can say that as far as I was concerned there was no discussion of further financing coming from IDEA, because it was made very clear at the time we made our initial investment that, consistent with our mandate, we expected and hoped that would carry him through to the private sector. As I said before, the subsequent Mazdamon financing, did not come up until towards the end of December, so no.

Mr. Epp: But Graham Software wanted even more money than it got. They testified before the committee that one of the reasons they were not successful was that they did not get additional financing from IDEA, in addition to the \$5.1 they got. They put their whole failure at the feet of the provincial government for not giving them more than \$5 million to have a successful company.

Mr. Cannon: Are you saying at the time they applied for \$3 million from us, they wanted more than that, or are you saying later on they wanted more?

Mr. Epp: They have indicated to this committee that the \$5.1 million was not sufficient for them to have a viable, successful company. They wanted

more money, and therefore, it was the responsibility of the provincial government or IDEA Corp. or the Ontario Development Corp. that they went bankrupt, not for any other reason, not the way they ran this company or whatever.

Mr. Cannon: Let me respond to that. As far as I am concerned, I take the responsibility for the Graham Software investment. We invested \$3 million in Graham Software, and other individuals and other parties put money in too. I would not invest a cent in any investee company unless I was satisfied that the amount of money we were investing, together with others at that time, was sufficient against the business plan and the projections to carry them to the private sector. We knew they all would not make it, that is unrealistic, but you do not put in a cent of money unless you believe they have a good running chance at making it.

Mr. Epp: But they did not, and they have indicated the sole reason was that IDEA did not give them more money. They were looking for more money. It had nothing to do with incompetence, it had nothing to do with lavish spending, it had nothing to do with a number of other factors; it was all ODC's fault and IDEA's fault because they did not give them more money. My feeling is why should you throw good money after bad, but that was not their testimony.

Mr. Cannon: I cannot really speak for Terry Graham or anyone in that corporation making those kinds of comments. What I can say is that I was satisfied that when we invested our \$3 million, we were putting in a sufficient amount of money, together with the other funds that were coming in at that time to take it to \$5.1 million, to carry them on their way. You bet. If I was not, I would not have invested a cent.

Mr. Epp: Did you find Graham Software very forthcoming with all the information you needed in order to make a reasonable business decision, spending taxpayers' money?

Mr. Cannon: Yes.

Mr. Epp: As far as you were concerned, they always provided you with the full information?

Mr. Cannon: Any questions that I asked as part of making the initial investment or as part of the follow-on monitoring process while I was still there and questions I asked of them for the second round of financing were all answered.

Mr. Epp: If you are so satisfied that you asked all the right questions and they gave you all the right answers, why were all the creditors lined up at the door of ODC when ODC took over on July 1, just a few months afterwards? In other words, ODC has testified there were all kinds of creditors saying, "We need money from Graham and Graham is not paying us," and you extended \$5 million to Graham, you and IDEA; and yet there are all these creditors lined up. If everything was so perfect there--you did not use that word; I am using the word "perfect"--if everything was just the way you would make a business decision, why would all these creditors be lined up?

Mr. Cannon: Let me try to help you. A few minutes ago, I alluded to the fact I was there for a certain period of time. Beyond that, I was not involved in any way, shape or form.

Let us talk very specifically about the financial condition of Graham Software Corp. at the time we made our second investment. We received approval on March 6 to invest \$2 million, having already previously invested \$3 million.

There are two components to that decision, at least as far as I am concerned in my mind, in determining whether I am going to proceed or not proceed with that \$2-million request. One, the investment decision: Is it a good product? In this case, did Mazdamon itself stand a reasonable chance of being successful? The best acid test we can use is yes it did because it was sold for a profit.

Two, you want to understand the financial condition of Graham Software at that point to make sure you are not making that further \$2-million investment to protect a bad investment that was made earlier. The way you do that is you compare the actual financial position of the company at that time versus what it was budgeted to be, because remember what I said earlier; we signed off on the budget on day one.

At the end of January, i.e., January 31, 1986, which is the financial date we were using for information to go to the March 6 board meeting, Graham Software Corp. had in excess of \$2.9 million of cash in the bank. That was verified by Toronto-Dominion Bank statements. So I was not smoking something funny or anything; that was fact. Budgeted, there was to be \$3.1 million of cash; so the variance or the deviance around that was they were over budget by \$200,000. Accounts payable were approximately \$115,000 and revenue was \$40,000 versus budget of zero. Net net, at the time we agreed to put the second \$2 million of financing into Graham Software Corp., their actual financial position was within 10 per cent of what they had budgeted and I had signed off on day one.

Mr. Epp: It could not have been. They could not have gone downhill that quickly. Maybe that is what was on the books, but it certainly could not have been there in reality because they could not have wasted all that money in such a short time; they went down the drain in a hurry.

Do you know what I think? I think you people were blindfolded. You were blindfolded by what they were telling you, and you did not bother checking. You had all these creditors who were lined up for ODC when it took over. You were basically blindfolded by Graham and you really did not even check into what was going on. You gave away \$5 million of taxpayers' money, for which we ended up with \$300,000.

1110

Let me ask you another question. Bill Douglas was on the board of Graham Software on behalf of IDEA Corp. He continued on the board even after he left IDEA Corp. and worked full-time for Graham. Were you aware of that?

Mr. Cannon: Yes.

Mr. Epp: Did you condone that?

Mr. Cannon: I recommended that Bill Douglas not stay on the board after he left IDEA Corp.

Mr. Epp: But your recommendation was not followed?

Mr. Cannon: That is correct.

Mr. Epp: To whom did you recommend it?

Mr. Cannon: Harold Blakley.

Mr. Epp: Was the board aware of this?

Mr. Cannon: Which board?

Mr. Epp: The IDEA board; that Mr. Douglas was still a representative from IDEA Corp. on Graham's board, despite the fact that he now worked for Graham Software?

Mr. Cannon: I cannot answer that. That I do not know.

Mr. Epp: You do not know whether--

Mr. Cannon: No, I do not know that.

Mr. Epp: You do not know whether Mr. Blakley took that to the board?

Mr. Cannon: I do not know that. Probably--I should not speculate, but I do not even know whether we had any board meetings after March 6. I do not know the answer to that.

Mr. Epp: Let me ask you one further question. Mr. Winter testified on behalf of ODC that in the seven months when he was a board member of Graham Software, that board met once. I think it was on July 21, if my memory is correct.

You have had a considerable amount of experience with IDEA Corp. and in your consulting capacity. This is a firm that was in serious financial difficulty. If there were a firm in financial difficulty which relied on its board for advice and so forth--that is the purpose of having boards; you do not have a board if you are not going to consult it, particularly when you are in financial difficulty--what would your experience be on how often they should have met with and consulted the board, if they were serious about extricating themselves from a difficult financial situation?

Mr. Cannon: I can respond this way: If a company is in financial distress, a board of directors has a fiduciary responsibility to all the shareholders to meet as often as is needed to to get the job done. I cannot tell you how many meetings you need, but you sure as hell need a game plan very quickly, and you do not drag through until you get one.

Mr. Epp: And you need more than one in seven months.

Mr. Cannon: Even if you are financially healthy, you need more than one in seven months.

Mr. Epp: Based on that, would it be your perception that Graham Software was not serious about extricating itself from a difficult financial situation?

Mr. Cannon: That would be unfair for me to speculate. I would prefer to leave it the way I answered the earlier question. I think I was pretty clear on what I think about frequency of board meetings.

Mr. Epp: Thank you.

Mr. Chairman: Before we start the second round, I have a couple of brief questions.

Mr. Cannon, you were talking about preparing the offer to arrange external financing and said Mr. Graham approached you to take on that chore. What is your background in that field? Have you prepared similar offerings?

Mr. Cannon: Yes. My background is primarily corporate finance within a merchant banking environment.

Mr. Chairman: In Mr. Graham's statement to the committee, he was talking about the IDEA organization disbanding and losing critical players: "Geoff Cannon in particular was forced to abandon his fund-raising commitments on Graham's behalf." You have indicated your sole role was to prepare the offering. I take it from this reading that Mr. Graham is more than implying, he is saying you also had a responsibility beyond that to try to find sources of external financing.

Mr. Cannon: Let me help you there. What happened was that after I accepted the assignment to do the consulting work for Terry to prepare the offering memorandum, I did not even complete it because it became evident to me that the requirement on my time was just going to be too great; so I turned the project over at that point to Bill Douglas to finish the offering memorandum.

Mr. Chairman: So you are saying, really in contradiction to this statement, that you were not in a fund-raising capacity for GSC?

Mr. Cannon: It was contemplated that hopefully I would be able not only to complete the offering memorandum but also to give them a hand raising the funds.

Mr. Chairman: You had not talked about having future responsibilities. This would have been a separate contract?

Mr. Cannon: That would have been tied to the consulting arrangement that I had. It is all one and the same.

Mr. Chairman: Now you are saying that you entered into this \$4,600 agreement. You did not complete the work. You did not complete the offering and you did not complete the other element, which was to participate in trying to find private sector investors.

Mr. Cannon: That is correct. I did the first part; I earned \$4,600 based on per diem.

Mr. Chairman: It was a per diem contract.

Mr. Cannon: That is correct.

Mr. Chairman: You talked about the company seeming to be in pretty solid shape when you presented recommendations to the board for additional funding to acquire the Mazdamon rights. Since that time, if I recall from your previous appearances before this committee, I think you were looking at or you had arrangements with ODC to try to manage some of the portfolio investments in that transition phase from IDEA to ODC. Did you play a role with one or more of the portfolios during that phase?

Mr. Cannon: I am confused. I am sorry.

Mr. Chairman: I am just trying to recall from memory. You and I think Mr. Logan were talking about acting on ODC's behalf to manage IDEA portfolios.

Mr. Cannon: Two components, yes. Daryl and I were actively negotiating with the ODC to take on the ongoing management of the IDEA portfolio.

Mr. Chairman: The complete portfolio?

Mr. Cannon: The complete portfolio. We would take the whole works on. That is correct.

Mr. Chairman: What happened to that? It simply went down the tubes?

Mr. Cannon: Wyda came up, and all of a sudden, kaput. What Daryl and I subsequently agreed to do with the ODC was, recognizing that we were not going to go forward in that connection, we agreed to stay on for a period of one or two months after IDEA was wound down June 30 and give them a hand in transitioning the companies from IDEA up to the ODC.

Mr. Chairman: And you did that?

Mr. Cannon: Yes.

Mr. Chairman: What was the interaction between yourself and ODC? What was the environment or the atmosphere at the time? How did you feel ODC was going to deal with the portfolio? Did you have any feel for it at all? I know some of the claims that have been made in terms of the direction I am going, that based on Wyda and some of the other public claims about Graham, ODC panicked and took a totally different direction in respect of these investments. I am just wondering if you had any feel for that sort of reaction from the ODC officials you were dealing with.

Mr. Cannon: Yes, I sure have some very strong feelings, quite frankly. Let us put it this way. The ODC, in my view, was really not geared up to take on the whole IDEA portfolio; and to get hit with that entire portfolio, knowing what Daryl and I knew about the portfolio and the ongoing requirements, is a pretty stiff order. On one hand we felt that--I should not talk for Daryl; on one hand, I feel that the ODC had its hands full, too full, coming out of the blocks. At the same time, the way in which I perceived and felt that they would get at the job was first-class.

Daryl and I spent a good chunk of time with the two or three people from the ODC who were going to be responsible for taking on the investments that we had individually made within IDEA, and they were extremely co-operative in terms of trying to understand what the hell they were getting saddled with, which was quite a bit. I found them to be very co-operative.

Mr. Chairman: In your view, and I think Mr. Graham mentioned this too, perhaps it was the most appropriate way and you felt the government was going to go in this direction of getting the private sector involved in the management of the portfolio.

Mr. Cannon: Sorry; I missed the first part there.

Mr. Chairman: I think Mr. Graham was suggesting that you were implying or indicating to him that with the wind-down of IDEA, you felt that the appropriate way to go and that the way the government was going to go was to get the private sector involved somehow in the management of the portfolio.

Mr. Cannon: Yes. I do.

1120

Mr. Chairman: Do you still think that would have been the wisest course of action?

Mr. Cannon: Let me put it this way. Implicit in every single investment we made at IDEA Corp., given the stage in the life cycle the companies were at, these companies needed as much management assistance as they did money, and therefore, from my standpoint and I think Daryl's, it was absolutely critical that somebody who had experience on the management side as well as the financial side get involved with these folks at the earliest possible moment, because in many cases they had only two or three of the necessary people that you need in an infrastructure to make the darned thing go; they were really grappling.

Mr. Chairman: I am going to put you on a spot a little bit here again. You made the recommendation for the second investment in March, was it?

Mr. Cannon: Yes.

Mr. Chairman: And ODC came on board in July? I am not positive about the dates. We are talking about three months. You talked about making your presentation and then feeling the company was progressing basically according to the business plan--a few minor concerns but nothing terribly serious.

I have a quote here. I was not at the hearings yesterday, but Mr. MacKinnon apparently said the company was dead in the water when we got it. That is two and half to three months later. I am just wondering if you have any observations on that. I know Mr. Epp said it is difficult to understand a company going down that quickly. Of course, Mr. Graham is saying: "Look, we were not dead in the water. We were a viable company ready to continue to make a success of this thing, but because of ODC's reaction, coming into it with a negative approach, we were destined to failure." Since you were dealing with it and thought it was a viable venture two and half months prior to the takeover, I would like to hear your observations on that now.

Mr. Cannon: I would prefer not to get in the middle of any discussions that Terry and David are having, and I understand they are apart on the issue. From my perspective, what I can say is that in the period between when I recommended that IDEA invest the second \$2 million--and I have been very specific about the company's financial condition at that time, notwithstanding what Mr. Epp thinks--and when I turned over my responsibility for all the investments on my side of the line, the one thing I knew about Graham Software was that the revenues in the company were not coming in as quickly as budgeted.

As I said, the January 31 position was actual revenues \$40,000, expected revenues zero. But thereafter, and very quickly, revenues were expected to come in and the nature of that business, as we all understood it from time zero is--and I do not want to get in any discussion about lavish spending or anything that those two have been discussing--you have a heavy fixed cost

structure, and by God, you need the revenue and you need it on a timely basis. When somebody says the thing was in the toilet or in the tubes on July 1, I cannot really respond to that.

Mr. Gillies: I would like to follow along that last line of questioning from Mr. Runciman for a minute or two.

I have notes of a telephone conversation I had with an IDEA employee in May 1986. I am going to respect the wish for anonymity of the person who told me this, but it was an employee of IDEA who had apparently expressed concerns to his superiors about the integrity of the Graham investment as of that time. That is what my notes would indicate.

As of May 1986, there was somebody in your organization expressing concerns to his superiors. The employee expressed concerns about the investment and was told two things; the political connections of the company were mentioned, and the exact quote I have written here is: "These guys"--meaning Graham--"were whiz-kids and not to worry about the money. They were good for it."

I guess my question to you is, as of May 1986, had concerns been expressed to you by any of your subordinates about this investment?

Mr. Cannon: No.

Mr. Gillies: Can we go right back to the time that the original decision was made?

Mr. Cannon: Is that for the first investment now? Are we going right back to the first investment?

Mr. Gillies: Actually, I take it from these notes that this is referring to the second investment. We had testimony before the committee that there were some concerns raised by staff people about the first investment because of the nature of it, because it was somewhat different from the other IDEA Corp. investments because of the marketing nature. Do you recall those, and can you tell us a bit about just who within your organization was saying, "I don't think we should do this one"?

Mr. Cannon: I can help you part-way. We basically had the whole works, the whole group in the boardroom, talking about the whole need to promote software and to find an outlet into North America for good Ontario-based and developed software. We had that discussion with virtually all the professional and support staff in the corporation at that time, and clearly there was mixed discussion and mixed feelings as to whether that was consistent with IDEA's mandate.

On the second question, as to who specifically voted against, I cannot help you. I cannot remember.

Mr. Chairman: Mr. Gillies, if you do not mind my interjecting here for one moment just to apprise the committee of a situation we are getting into in terms of time, I would like to get some direction.

We have a summary of statements by witnesses already scheduled, and we have the courthouse facilities scheduled for a 1:30 p.m. start. If the summary statements go as they possibly could go and use the maximum amount of time, we are talking about 50 minutes, and I have at least two other questioners on my list. How do you want to deal with this?

Mr. Gillies: Mr. Chairman, I have two more questions and I can wrap up within three or four minutes. I will move as quickly as I can.

Mr. Epp: Mr. Chairman, if they use the maximum time, we have until 11:45 a.m. to ask these questions and then have 15 minutes each for three statements by the three groups. That would take us to 12:30 p.m. I suggest then what we do, since we have all had one round of questioning, why do we not divide the remaining time three ways until 11:45 and do it that way?

Mr. Philip: We have no further questions.

Mr. Chairman: Mr. Gillies has a couple more and Mr. Ferraro has one. We will try to get through it.

Mr. Gillies: I will move quickly. The question has been raised of just where the portfolio was going after wind-down. My understanding is that you and Mr. Logan had a proposal to assume the portfolio, that Mr. Blakley also had a submission in and that a number of other companies and individuals had expressed their interest, presumably through the late winter and spring of 1986.

In Mr. MacKinnon's testimony yesterday, he told us that as of his assuming his responsibilities at Ontario Development Corp. in January, his superiors had told him there was a very strong possibility that ODC would be taking over the portfolio. I will not say "likelihood," but if we check the record, I believe Mr. MacKinnon said it was flagged to him as a distinct possibility. When did you first become aware that ODC was going to get it? Do you not think perhaps the exercise that you, your partner and the others were going through was a bit futile, that just maybe the decision had already been made as to where the portfolio was going?

Mr. Cannon: Let me try to help you with this. There is one distinct difference between the way that Daryl and I and any of the other groups approached it. The difference is that the other groups were all proactive in approaching the ODC for permission to take on the portfolio. We were very clear. We stated that we had an interest in taking that responsibility on but that we would not compete against anyone else from within IDEA who was also looking to do the same thing. Quite frankly, it was Harold who had an interest in doing it.

We said, "If you are interested in Daryl and I submitting a proposal, ask us, and you sure as hell will get one." They asked us, and we proposed.

1130

Mr. Gillies: When was your first absolute knowledge that you were not getting it, that Mr. Blakley was not getting it and that ODC was?

Mr. Cannon: I think it was very close to the day the announcement came out on Wyda, and then all bets were off. At that point, when the Wyda announcement came out--I think David might be able to help us here--Daryl and I had, in effect, negotiated and settled an arrangement for Daryl and I to take it on, and it was scheduled to go before Management Board for approval.

Mr. Gillies: Would it be fair to say that what had happened was the decision had been pretty well taken that the portfolio was going to you, it was going to the private sector, and that after the Wyda-Caplan affair blew up in the House, the decision was made to reverse that decision and go to the Ontario Development Corp.?

Mr. Cannon: I think that is exactly what happened.

Mr. Gillies: I have one more question regarding the conflict angle. I am looking at the letter of agreement, dated November 20, between yourself and Mr. Graham. As you have indicated, it calls for a \$125-an-hour consulting fee for consulting matters. It also says in the latter paragraph that in the matter of providing or seeking private capital for Graham Software, you would be paid a fund-raising fee of three per cent of the capital invested.

Mr. Cannon: Correct.

Mr. Gillies: In other words, if you got \$1 million private sector money, you would get approximately \$30,000 as a finder's fee?

Mr. Cannon: Correct.

Mr. Gillies: I have two concerns about this. One is, in your mind, when did this letter of agreement lapse? Was it still active at the time the second round of IDEA Corp. funding was being negotiated and your involvement in that?

Mr. Cannon: Good question. As far as I was concerned, it lapsed at the time that I could not even complete the offering memorandum obligation. I had to turn it over at that point.

Mr. Gillies: I think the concern here is obvious to you. The investment of \$2 million additional IDEA dollars in Graham would obviously make it more attractive for private-sector investment, so my concern was, were you were still under contract to seek private funding at the same time that the additional IDEA money was being negotiated?

Mr. Cannon: No.

Mr. Gillies: My last question in that regard is this. There was a great deal of concern expressed last summer in the Wyda matter and a great deal of indignation from IDEA about the finder's fee paid to Ivan Fleischmann at that time.

Mr. Cannon: Yes. I remember that.

Mr. Gillies: The corporate policy that was described to our committee was that finders' fees were not encouraged and that IDEA preferred not to have anything to do with them. Did that cause you a concern? In fact, was that your knowledge of IDEA policy at the time you contracted with Mr. Graham for a three per cent finder's fee?

Mr. Cannon: Was that my knowledge? Going back to the Wyda thing, I think I spoke here very specifically on that. I think we are talking about two different things here. As far as finders' fees for bringing deals into IDEA Corp., it was a farce. As far as I was concerned, nobody had to pay anybody a finder's fee--we were open for business and you simply had to walk in or telephone--so the \$30,000 fee to Ivan Fleischmann was absolutely ridiculous. I do not care about the amount; nobody had to receive a fee. Receiving a fee for accessing financing is a separate and distinct matter, and yes, I endorse that.

Mr. Gillies: So you draw a distinction there. To your knowledge then, IDEA had no problem with its investee companies paying finders' fees for private financing, but there was an objection to its being applied to the IDEA financing?

Mr. Cannon: Exactly, because it is very normal practice.

Mr. Gillies: Thank you.

Mr. Philip: That is an interesting distinction.

I want to go back to your conversation with Mr. Blakley concerning your contract with Graham. You will probably recall that Mr. Blakley--and I am sure that you have either been watching these proceedings on television or you have at least--

Mr. Cannon: I have sure read the newspapers.

Mr. Philip: --read the newspapers. Mr. Blakley did not remember the memo. You have told us this morning that you also had a conversation with him at a much earlier date in which you discussed this matter.

Mr. Cannon: Yes.

Mr. Philip: Can you tell us the circumstances surrounding this conversation? What I am getting at is, was it more than just passing in the hallway and saying, "Oh, by the way"?

Mr. Cannon: I would have sat with Harold in his office, yes.

Mr. Philip: You had a meeting with him to discuss this matter?

Mr. Cannon: Sure. Absolutely.

Mr. Philip: That was the only matter under discussion, or could it have been accidentally talked on while other matters were discussed?

Mr. Cannon: I cannot respond as to whether we discussed anything else, but no, it was not an idle conversation, because again we not only had the issue of receiving permission to do the work, but I wanted to make it crystal clear with Harold that in my mind what I was about to do, the nature of the work that I was going to do, was bang on what we were there to do at IDEA.

Mr. Philip: Did you discuss in detail the contents of the type of work you were going to be doing?

Mr. Cannon: Yes. I would have told him that I was going to give Terry a hand preparing the offering memorandum that would hopefully, in turn, lead to raising money from the private sector.

Mr. Philip: Did he go through this in what one would call fairly good detail and did he question you on it?

Mr. Cannon: I think so. I simply laid out what I was proposing to do.

Mr. Philip: You are sure he understood it at that time?

Mr. Cannon: I think so.

Mr. Philip: He said, "Yes, this is a good idea," or "I have no objections," or whatever?

Mr. Cannon: That is right.

Mr. Philip: Did he ask you to put anything in writing or was that simply your idea a year or so later or several months later?

Mr. Cannon: He neither asked for something nor was it my idea. As I said earlier, it was not until Robin Wigdor from Graham Software wrote to me and said, "I understand that you have permission from Harold, but for our purposes here in our file, we would like something that carries written approval from Harold." At that point, I got the job done right.

Mr. Philip: He just forgot then? That is the only explanation we can come to.

Mr. Cannon: I think so.

Mr. Philip: One last question. Do you feel the turning over of the portfolio to ODC was a mistake, just for the record?

Mr. Cannon: Oh, boy. How do you answer and not be in conflict? I am learning about that. Let me answer it exactly the same way I answered it before, because obviously it is something I have thought a lot about both recently and long term.

Mr. Philip: It is something that this committee has to deal with.

Mr. Cannon: I understand that. I am anxious not to get in the middle of any discussions that are between Graham Software and the ODC. As I mentioned before, every single investment that we made at IDEA Corp. carried with it the implicit recognition that these companies needed management help as well as money. They just did not have, by and large, the horses to get the job done completely.

ODC was performing quite a different function. As I said then and now, to take an entire portfolio and put it in somebody's hands who is not familiar--not that the ODC did not have capable people in there, but to dump the whole thing on them when they were not geared up to handle it, that is a hell of a way to run a railroad.

Mr. Philip: You basically see ODC as a holding company, do you not, rather than an investment company and consulting company?

Mr. Cannon: Yes, that is very close to the way I would describe it.

Mr. Philip: Would it be fairly accurate to say that perhaps holding companies should not be involved in venture capital?

Mr. Cannon: I cannot comment on that. That is not fair. I do not know.

Mr. Ferraro: I just have one question. First, I want to apologize to the committee and to Mr. Cannon for not being present for most of his presentation. My colleague assures me the question I am going to ask, which I have asked most of the people who have been associated with this issue, has not been addressed directly. If it has, bear with me. It is very straightforward.

In your association and capacity with IDEA, and your involvement, whatever that may be, were you ever approached, coerced, pressured, persuaded, arm-twisted by any politician of any party in the past 20 years?

1140

Mr. Cannon: In relation to Graham Software?

Mr. Ferraro: Yes, in particular. I will make it a two-part question: first, in relation to Graham Software, and second, if you want to comment on any other duties.

Mr. Cannon: Sure I will. I will respond the same way I did when I was invited to be here for Wyda. Can I just repeat your question to make sure, because this is a very key point here?

Mr. Ferraro: Sure.

Mr. Cannon: You are asking me did any politician and/or civil servant--

Mr. Ferraro: You can address both, but what I am particularly concerned about are allegations that politicians have used undue influence in order to get moneys for Graham.

Mr. Cannon: The answer to that question is no. Nobody ever approached me, nobody ever pressured me. I think they had a pretty good idea what the response would be. "Open the door on something else."

Mr. Ferraro: You implied by your hesitation that you were coerced by some civil servants. Do you want to comment on that?

Mr. Cannon: To be very specific, last summer. Mr. Gillies will recall we had quite a discussion on it. That issue was a big part--

Mr. Ferraro: When did you have this discussion with Mr. Gillies?

Mr. Cannon: Right here in this room or down the hall. I was invited to come to the Wyda hearings, though Daryl was the lucky one who had it on his side. The question was asked as to whether I received any influence or pressure to make an investment in Wyda.

Mr. Ferraro: You are talking about Wyda as opposed to Graham.

Mr. Cannon: Then it broadened out to a more generic discussion and I answered positively, yes, somebody did try to do that.

Mr. Ferraro: That was in the context of Wyda?

Mr. Cannon: No, that was in connection with an investment that we actually declined to make. I named the investment at that time.

Mr. Ferraro: But as far as Graham Software is concerned?

Mr. Cannon: Zero. Absolutely none.

Mr. Chairman: We were going to end the questioning, but this prompts one question from me. Michael St. Amant, who is with the Ministry of Industry, Trade and Technology, testified earlier this week. The second phase of funding to Graham was a last-minute addition to the agenda at the insistence--I think that is an accurate description--of Mr. St. Amant. Did you at any point have discussions with Mr. St. Amant about this particular--

Mr. Cannon: About Graham Software?

Mr. Chairman: Yes. Obviously, you were making the recommendation at the board. It was on the agenda at Mr. St. Amant's insistence.

Mr. Cannon: I did not, but I asked that Bill Douglas, who worked with me, have a very specific conversation with Michael, who at that time was with MITT. They were in effect representing or caretaking MITT's position down there, because the decision had already been made to wind down IDEA Corp. I said, "I want to know, before we take it to the board, what MITT's position is on this." So yes, Bill had that conversation with Michael at my request.

Mr. Chairman: Mr. Douglas made the approach to Mr. St. Amant?

Mr. Cannon: Correct, at my request.

Mr. Chairman: Thank you very much, Mr. Cannon. As you know, we have summary statements coming up. I do not know if you wish to be included in that group. I will certainly offer you the opportunity.

Mr. Cannon: I am about talked out. I think I will probably sit in and listen, but rather than making any comments, I have one request. When I woke up Monday morning and saw my name in the newspapers in the way that I did--I am not faulting the press here--it is obviously very disturbing, because we are talking about reputations and credibility and so forth. The request I have is that when you all get through and come up with your conclusions and recommendations, if you decide or feel that I was not in conflict of interest or was not grossly negligent in monitoring the portfolio or whatever, I would appreciate it if somebody could say something, because it helps me in what I am doing. Let us just leave it at that.

Mr. Chairman: A point well taken.

Before we get into summary statements, we have a bit of a complication. Mr. Wigdor has made a request to the chair that he be afforded an opportunity to testify before us outside of the summary statements with what he believes is new testimony dealing with the Biddell report, conflict of interest and matters that reflect on his professional integrity. I respect his request. I am a little concerned that once we get into that, we are going to generate rebuttals and questions, and it is going to carry us far beyond our agenda allocation.

Mr. Gillies: I appreciate your concern, Mr. Chairman, but I do not think we can refuse such a request. If we are going to make a fair judgement of this matter, with all the pertinent facts that are available before us, I would be very hesitant as a member of the committee to deny Mr. Wigdor that opportunity. I know scheduling is a problem, but if he has come forward and he says it is new evidence, we had better hear it.

Mr. Epp: It is not one of us who wants to ask him the questions. It is he who wants to provide the information, and if he wants to provide the information, he has 15 minutes to provide it. That is what he, Mr. Graham and Mr. Wawrew have the time for. I do not understand why we would afford him an additional question period if it is not we who want to ask him the question. He has 15 minutes to make that statement. I do not see any need for it, unless we want to open up the whole thing again.

Mr. Gillies: Part of the problem is that Mr. Wigdor indicated to me yesterday as I was leaving the committee room that he would not be here today. Maybe that is the problem.

Mr. Philip: The purpose of the summary statements was to do exactly that, to deal with the matters that have been before us. If Mr. Wigdor feels he has new information, it has to be treated separately. This committee has struggled with this; there are some major problems so far, and I do not know how this committee can act responsibly if it does not at least give him an opportunity to present new information. I do not see that as part of a summary statement. If he presents new information, though, it has to be understood that ODC and anyone else who may be mentioned or implicated in that new information should have a right to respond.

Mr. Chairman: I do not want to have a lengthy debate on this. We are chewing up the clock. Mr. Ferraro, can you be brief?

Mr. Ferraro: I will be very brief. Notwithstanding my colleague's remarks, I support what Mr. Philip has said in particular. In my view, Mr. Wigdor should be allowed to make the presentation with the conscious knowledge that it might prompt a further presentation from any of the other individuals.

Mr. Philip: How long is he going to be? How much new information is going to be provided?

Mr. Chairman: Approximately five minutes, I am advised.

Mr. Philip: Let us hear it, and then we will see what happens.

Mr. Chairman: There seems to be a consensus. Mr. Wigdor, do you want to come forward, please.

Mr. Wigdor: There are just two narrow issues, in respect of which I have conducted additional investigations on the basis of testimony given yesterday. The one that affects ODC directly I discussed with Mr. Cass before the commencement of the proceedings this morning; so it will not be taking ODC by surprise.

First, with respect to the conflict issues that have arisen, many documents that have been the focus of questions and discussions before the committee, I understood, had been drawn from my files when the Provincial Auditor's representatives were in my offices. I believe that is indeed the case.

In the course of questions yesterday, two matters transpired. First, Mr. Philip inadvertently ascribed Mr. Graham's views about the conflict matter to me. They are not my views.

Mr. Philip: I think I corrected it later--

Mr. Wigdor: I apologize.

Mr. Philip: --but if I did not, I apologize to you.

Mr. Wigdor: More substantively, Mr. Epp in the course of his questions about ODC raised a question concerning my obligations or what I should have done in the matter. That prompted me to review my entire file in this area as best I could between mid-day yesterday and this morning. I also cross-checked against my file to the materials the Provincial Auditor had extracted from those files. While it may be the Provincial Auditor's judgement that certain missing documents were not germane or important, I wish to make clear to the committee that I discovered in that cross-check certain

additional materials from the same file that I could not find in the appendix of documents from the Provincial Auditor. As I advised Mr. Arnott, I was able to have them copied and couriered from my offices. I have them available this morning.

1150

The second matter relates to submissions I made with respect to the Biddell review or inquiry and specifically with respect to the lack of opportunity on Graham Software's behalf and my behalf to make submissions to Mr. Biddell in connection with that review or inquiry.

In his testimony yesterday, Mr. Cass expressed astonishment that certain of the submissions on that indicated the Laventhol and Horvath materials had been available to Mr. Biddell and when asked if I was aware that was indeed the case, answered, I believe, "Absolutely." Frankly, that astonished me as much as my comments must have astonished Mr. Cass. Much of my time since then has been spent learning why Mr. Cass gave the testimony he did. I have ascertained that on the specific narrow point, Mr. Cass's testimony is correct on the basis of my investigations.

Given the context in which it has developed, I wish to inform the committee that I may have inadvertently misled the committee in the course of my submissions on this point. Given the testimony yesterday, I wish to confirm, first, from Laventhol and Horvath Ltd. that the senior partner who has been responsible for the conduct of the review contacted Graham Software, and specifically Mr. Graham, and obtained his permission to copy and remit to the Ontario Development Corp. a massive batch of documentation and that he confirmed that permission and the documentation submitted by his firm to ODC in writing to Mr. Graham. I was not aware of that fact until this morning.

I do not want to be in any way argumentative. I do want to make clear that in my view the principles of natural justice involved are not substantively affected or qualified by this disclosure, but I felt it important, particularly since for the first time in my professional career and in my adult life my personal credibility has been called into question, that the facts on this matter be clearly put before the committee. I thank you for the opportunity to have done so.

Mr. Chairman: Does any member of the committee wish to make a comment or ask Mr. Wigdor a question at this point?

Mr. Philip: On the matter of my questioning, I accept that Mr. Wigdor is correct. I think I changed it when I got the Hansard back. At one point, I was attributing comments to you and, in fact, it was Mr. Graham who had made the comments.

Mr. Wigdor: Thank you, Mr. Philip.

Mr. Chairman: I have the document you wish to have circulated to the committee as well in relation to this.

Mr. Wigdor: I had my secretary make sufficient copies so that it could be distributed. I submitted those to Mr. Arnott. I will let you make your own judgements. I was going to suggest the Provincial Auditor have an opportunity to examine it and ascertain whether it was inadvertent or not.

Mr. Chairman: Thank you. I will ask Mr. Douglas and Mr. Blakley to come forward at this point. Mr. Maruzzo has declined the opportunity to make a summary statement.

Mr. Douglas: I would like to address two issues, if I may, about which there has been much discussion, obviously; first, the conflict-of-interest issue and second, the issue regarding the proposal of the board of directors of IDEA on March 6.

First, with the conflict-of-interest issue, I certainly reflect the views of Mr. Cannon, and it is my view that I have not acted improperly and that I have complied with the code of conduct guidelines of IDEA Corp.

With regard to the second point, I would like to state that we took appropriate steps to verify any informational material contained in that proposal, including the cash position of the company. I think Mr. Cannon alluded to Toronto-Dominion bank statements; that was actually done and verified. Also, I did not provide consulting services to this company to assist in any way the presentation made at that second financing stage.

In that context, referring back to the conflict of interest and specifically the consulting work provided, the work I did on my own time was to assist the company to prepare an offering memorandum, the offering memorandum that was described by Mr. Cannon, who because of time pressures could not conclude it. I continued on to conclude the offering memorandum, which was to be presented to external venture capital groups in the United States, not to be submitted to the IDEA board--two distinctly different issues.

As a matter of fact, this is a copy of the offering memorandum, and as you can see--I am sorry, I have only one copy; I am sure we can get copies for you--it is certainly not a presentation that would be directed to the board of directors of IDEA and in fact confirms the fact that in the offering memorandum one of the issues that was addressed was that the company's plan is to redeem class A preferred shares in establishing a fully diluted ownership structure as follows: i.e., as Mr. Cannon described, the initial financing structure was designed so that the redeemable preferred shares pursuant to an external financing could quite easily be afforded.

At the time this work was considered to be in the best interests of GSC and IDEA, but pursuant to the code of conduct guidelines, I sought approval in writing from the president. I would like to read the relevant section, if I may: "During the course of his or her employment at IDEA Corp., no staff member in the professional/management category shall work for compensation in any other position without the prior written consent of the president...." I have that written consent from the president. He understood the nature of the work simply because it was a continuation of the nature of the work that Mr. Cannon was doing.

I would like to reiterate that the work was for a specific purpose regarding the US venture financing and not to prepare work for the company that would be contemplated as a proposal to the board of directors of IDEA. The subsequent decision to consider supporting the company, with its goal of adding Mazdamon to its portfolio, came after discussions with Glenn Drew, acting as a consultant for the Ontario Development Corp., and Michael St. Amant, along with Geoff Cannon and Mr. Blakley, obviously. The information provided to the board of directors and the other parties to the discussions, financial or otherwise--that is to say, marketing activities--can be substantiated.

The other issue I would like to address is the issue of myself being on the board of directors. I was appointed in September 1985 as IDEA's nominee. I did not receive any compensation for being a member of the board of Graham

Software Corp. at any time for acting as a director. This includes even after resigning from IDEA and continuing on the board. I never received any fees or compensation for being a board member.

1200

In fact, early on--I believe it was September--Graham Software Corp. did have a policy for its members on the board. I received a cheque from the controller of Graham Software Corp. for fees for the first board meeting. I checked the code of conduct, talked to the executive assistant to Ian Macdonald, the chairman, and pursuant to the code of conduct the cheque was sent back to Graham Software Corp. for cancellation, and that cheque is on record as never having been cashed.

When I resigned from IDEA Corp., I asked my superior, Geoff Cannon, if I should remain on the board. As you have learned this morning, he convened with Mr. Blakley; even though Mr. Cannon's recommendation was no, he did come back to me and say, "Yes, stay on the board." Obviously, it was Mr. Blakley's decision. The only interaction I had was with Mr. Cannon. I asked him if I should remain on the board. The answer came back later, "Yes, remain on the board until further notice."

I would like to take a brief opportunity to address more so one of the comments that was made yesterday, I believe by Mr. MacKinnon, about the company being a dead duck, or whatever the expression was, at the time when they took over. Actually, the company may not have been in the greatest shape. I would not profess to say that the company was a roaring success at that point. The achievements have been outlined. The first eight months of operation, the initial startup phase, the investment phase, had garnered \$200,000 in revenues. The subsequent five months, between May and September, garnered just over \$1 million in revenues. That indicated to me that there was certainly progress being made in revenues.

The Mazdamon trial base, established by Graham Software and ultimately verified by UCCEL, which actually bought the product and contacted all these companies that had trials of Mazdamon, was approximately US\$800,000 potential income that would be closing very shortly.

I believe in the concept of Graham Software Corp. I still believe there is a need for a corporate group that can provide a fluid distribution channel for software internationally. I believed in it through the tough times. I myself did not take any compensation from the company from August 1 right through to January 1987. I always believed there was a chance that because of the achievements that were made, because of the momentum, and not because the company was a dead duck but because the company was foreseeing a cash-flow squeeze in late 1986, we could address that problem and take advantage of the opportunity.

I am not going to comment on the events that took place throughout the summer, but an awful lot of time was spent by the employees and executives of Graham Software. I would like to say that I have the highest opinion of all of them and would work for them and with them again.

Before I finish, I would like to note that the auditor's report and the Biddell report considered the previously mentioned issues without contacting me or speaking to me. Consequently, I hope this committee will give me an opportunity, which I would like to take if possible, to prepare a written statement to be submitted to this committee outlining a chronology of events

pertaining to me specifically and allow me to do that at some time as expeditiously as possible. It is a very sensitive personal issue in terms of the extent of the accusations and, obviously, I would like to have a chance to defend myself, if you will. Those are my comments. Thank you.

Mr. Chairman: Thank you, Mr. Douglas. I will make the point now that the committee is inviting all witnesses to review the transcripts and make written submissions to the committee prior to our meeting of May 7, when we will be dealing with our draft report. I encourage all witnesses who have an interest in making written submissions to have them in prior to that date.

Mr. Blakley: I will try to keep my comments brief. First, I would like to apologize that I did not remember at the time I was asked if I knew of anyone other than Mr. Douglas having accepted consulting contracts. If I did not recall it at that time, I certainly have recalled it since, but it was not what I would consider a major event, of which I would therefore have instant recall. In hindsight, knowing what was said here, I should have recalled it. I did approve of both these gentlemen doing what they did simply because I knew full well the matter did not pertain to IDEA's business in any way. Also, because of the character and integrity of the two people involved, I felt they would conduct themselves in a fashion that would not embarrass me for having given that approval.

With respect to Mr. Douglas's staying on the board with my approval, this was done simply because, again, he was a trusted individual but also, more particularly, because we had no one else to nominate to that board. In fact, I think I recall discussing it with Michael St. Amant, who agreed it would be okay for Bill to stay on but for a very short period of time or until such time as ODC or the ministry could come up with a nominee to take his place. I think that was the sole purpose in extending Bill's directorship week by week.

I must say that I do not in my heart feel any sin or crime or intent to commit a sin or a crime was committed. I do agree that the appearances, the optics, the word I used the other day, are not good and perhaps in hindsight would not have approved, but I see that no damage was done. On the contrary, since full disclosure was given to me by Mr. Douglas and Mr. Cannon as to what they were going to do and the nature of the work they were going to do, and it could indirectly be of some benefit eventually to IDEA Corp., it was quite all right for them to do the work.

Incidentally, if Mr. Cannon agreed at one point to help Graham Software in its subsequent financing, it must be remembered that Mr. Cannon and Mr. Logan were both with us on a month-to-month basis, and they never knew from one month to the next when their services with the corporation were going to be terminated, because they were there on a consulting basis and each month were given an extension. I do not know how many extensions of their time were given--at least half a dozen. They came to the company, at my request, initially for one week, I believe it was, and ending up staying 15 months, but it was on a month-to-month extension basis. At any point in time, if a month later Mr. Cannon were no longer with the corporation, I presume he would feel that he would thereafter be free to carry out the assignment which he agreed to do for Graham.

1210

But what bothers me most are the comments made here by a number of witnesses, which would appear to me and certainly appear to the public through

the press as an indictment and an impugning of the character and capabilities of a number of managers and executives with the IDEA Corp. The kind of reporting that has unfortunately come out is damaging to the reputation of a number of people and, in particular, damaging to the reputation and integrity of the board of directors of IDEA Corp. who, in my view, were a group of extremely capable, high-profile, high-integrity people doing an excellent job in approving the investments we made.

For Mr. MacKinnon to say, "When he--Graham--came to us, it was the first time he faced professional management"--a quote which appeared in this morning's Globe and Mail--is a terrible, damaging statement to make, particularly in the light of the fact that up to and after the end of June 1986, there were many occasions when we were praised for the work we were doing by the Ministry of Industry, Trade and Technology staff, including Mr. MacDonell, Mr. Barnes and Mr. MacKinnon himself, as well as Mr. Kruger and Mr. Nixon. We were praised for the work we were doing right up until the end of June.

With respect to monitoring our investments, we, I and my staff, informed the board on many occasions of the situation wherein the number of investments we had accumulated put us in a position where we did not have the staff to properly monitor and manage these investments; this at a time when it had already been announced in February by Mr. Kruger, on behalf of the minister, that our days were numbered. As soon as that happened, of course, we started to lose staff. It put us into a position in that period, February to June 30, where we could not adequately monitor and keep track of what was happening with our investments.

So if some things escaped our attention and our notice, it was because we did not have the people, we had too many investments and we were losing staff daily. All in all, it is most unfortunate. I consider there not to have been any breach of conduct or the code of ethics, but everything was aboveboard and in accordance with the code of ethics. There was no intent to commit any sin, and I do not think any serious consequences have resulted from what we did. You have been fair in your questioning. We have tried to be as honest and direct as we could in responding to your questions. Thank you.

Mr. Chairman: Thank you, Mr. Blakley and Mr. Douglas.

We still have Graham Software and the ODC to make presentations and they have each been allocated up to 15 minutes. I think it may be more appropriate to break now and delay the courthouse proceedings by half an hour this afternoon. We can finish the testimony by two o'clock and then we can get into the courthouse matter at two o'clock.

Mr. Epp: We have heard some statements now and, to keep them all together, I am wondering whether it might be more appropriate to hear the others now and then come back at two o'clock.

Mr. Chairman: We have only an hour allocated for lunch and I personally have some commitments. I do not know about other members.

Mr. Epp: It does not matter.

Mr. Chairman: I do not think the loss of an hour is going to hurt us in that respect.

Mr. Epp: Okay.

Mr. Philip: Mr. Wigdor may have appointments.

Mr. Ferraro: What are you suggesting exactly, Mr. Chairman, that we start half an hour later?

Mr. Chairman: We start at 1:30 p.m. and we can complete the other two groups by two o'clock.

Mr. Epp: I am not sure how we are going to inconvenience the witnesses, but I would like to do whatever is in the best interest of those witnesses at this point. Mr. Graham had his hand up and Mr. Wigdor may have a problem, so I am just wondering if they have some information to help us make our decision.

Mr. Wigdor: Mr. Chairman, I have rescheduled my morning to be here, to take part and to speak. I have commitments to a client, who graciously permitted me to reschedule to be there from 2 p.m. to midnight.

The Graham Software submission could be broken into two parts, a brief part in which I will touch on certain factual matters and a lengthier part by Mr. Graham in which he will be addressing the standard issues raised before the committee. If I could beg your indulgence and that of the committee, I can keep my commitment to my other client.

Mr. Gillies: Let us hear Mr. Wigdor now.

Mr. Chairman: I think Mr. MacKinnon also has a concern about timing.

Mr. MacKinnon: I was just going to say we would be agreeable to postponing until after lunch.

Mr. Epp: Let us hear Mr. Wigdor.

Mr. Wigdor: I apologize again for the disruption to the procedure and thank you for your indulgence.

As I indicated, I will be touching briefly and I hope succinctly on certain factual matters that have arisen in the course of the submissions and testimony given to you. In fact, there are really only four issues I wish to touch upon.

The first is testimony given yesterday by Mr. MacKinnon concerning the breach letter from Datamatrix under the Mazdamon product and how the failure to cure the reporting breach led to his ultimate decision as to the position of the government and the ODC with respect to Graham Software.

If you recall, the reporting breach was an obligation to report revenues so that the royalty obligations to the vendor could be calculated. What did not get discussed in that testimony or in your questioning was how the \$41,000 figure, the arrears that ultimately were paid by ODC, came to be determined if, indeed, as Mr. MacKinnon implied, that reporting breach had never been cured. Since the decision of ODC turned on this very specific point, I suggest to you that in the course of your deliberations in assessing that testimony you look to the documentary evidence that is before you to learn how that reporting breach was cured.

The second and third factual matters I wish to touch upon arose in the course of Mr. Winter's submissions to the committee yesterday. There was

testimony concerning the calling of board of directors' meetings of Graham Software Corp. from July 31, when he attended the first meeting, until the date of his resignation.

1220

Rather than dealing with the factual statements he made, I would request that when the transcripts are available and you have an opportunity to examine the transcripts, you examine his testimony and compare it to the three formal notices calling meetings of the board of directors of Graham Software Corp. that were served on Mr. Winter. When you look at the notices calling those meetings, in particular with respect to the second of the three meetings that were called, examine document 21 in the Provincial Auditor's black book of materials--that is the standstill agreement that was negotiated with respect to the Mazdamon process--and in particular the consideration section of that agreement. I put it to you, when you look at that you will discover--at least those of you who have experience with contracts--that it is a very unusual consideration section.

With respect to the third meeting, I have not only provided copies of the notices calling these meetings but also the first notice of Mr. Winter's resignation that was delivered to Graham Software Corp. That notice was telecopied to my office by Blake, Cassels and Graydon. It is conveniently date- and time-stamped and I invite you to compare the date and time stamp on that notice to the date and time for the calling of the third board of directors' meeting that I am discussing.

Should the opportunity arise, I would also invite you to confirm with Mr. Winter whether, the same day he resigned, he did not in fact confirm to Mr. Graham by telephone that he would be in attendance at the meeting the next morning.

The second matter that arose in Mr. Winter's testimony is the notorious September 25 letter from Mr. Graham to Mr. Arbus. Very briefly, Mr. Graham has a lamentable tendency to correspond and deal directly with lawyers for parties whose interests are opposing. That letter has had much discussion and questions asked about it, in particular about the part of it concerning the proposal to sell the shares of Graham Software Corp. to Mr. Arbus's client.

In his testimony yesterday, discussing his knowledge or lack of knowledge about the proposal to sell the shares of Graham Software Corp. in connection with the Mazdamon defaults, Mr. Winter indicated, as I understood it, that he had no knowledge of the proposal to sell those shares.

I do not have sufficient copies, because I had it telecopied and messengered from my office this morning, but I expect copies will be available through the clerk of the file note Mr. Arbus prepared of the meeting that was referred to in the testimony of Mr. Graham and myself, the meeting on this very subject that occurred in the offices of Mr. Arbus with his client, Mr. Graham, myself, Mr. Winter and Mr. Goldfinger. In the telecopy, I included the covering letter from Mr. Arbus that indicates copies of this memorandum were sent to both Mr. Winter and Mr. Goldfinger at the time. The meeting took place September 30. Mr. Arbus prepared the note, because I was leaving immediately on a holiday the next morning.

When you have this before you, I refer you specifically to paragraph 5 of the memorandum documenting a meeting at which Mr. Winter was in attendance: "Mazda or its nominee will purchase for the sum of \$450,000 all the outstanding shares of Graham."

The last factual matter relates to what is now becoming, in my mind at least, the notorious Laventhol and Horwath study. I made certain submissions concerning it. Indeed, they might be characterized as allegations as to the manner in which the participants in the study have allowed it to be conducted.

In his testimony yesterday, Mr. MacKinnon quoted from a letter from Laventhol and Horwath to myself concerning the principal partner's illness and, more substantively, Mr. Graham's request to postpone certain parts or the remaining conduct of the study until after completion of the sale of Mazdamon to UCCEL Corp. I suspect, since no questions were asked on the point, that put the matter to rest in your minds.

I thought I had made it perfectly clear in my testimony on Tuesday, when I made the submissions that Mr. MacKinnon was responding to, I was referring to the last 10 weeks up to now, 1987, since the closing of the UCCEL transaction and indeed since the settlement entered into between the government of Ontario and Graham Software Corp. If I did not make that clear, I apologize. I felt I did. I wish to make that perfectly clear now. I wish to stand by every statement I made on Tuesday with respect to the Laventhol and Horwath inquiry.

Since I did not have an opportunity to refer to the documentary evidence on Tuesday and so it is at least on record in Hansard, I would like to refer briefly to the germane materials and they are most conveniently found in the 16 volumes of copies that were extracted from my files and provided to Mr. Arnott. They are in volume 1, tabs 32, 36, 42, 43 and 44; volume 2, tabs 2, 4, 5, 8, 19, 20, 21 and 22; and volume 3, tabs 8 and 9. I did a hurried review this morning with the assistance of the clerk. That may not be a complete list.

I would say in addition, however, that the committee should consider requiring production before it of communications between Laventhol and Horwath Ltd. and the Ontario Development Corp. concerning this inquiry by Laventhol and Horwath since the date of the settlement between Graham Software and the government of Ontario.

Gentlemen, those are my submissions.

Mr. Chairman: We will break for lunch and hopefully, you can all be here--

Mr. Graham: I am sorry. I tried put my hand up before. I have an appointment this afternoon as well. I would like an opportunity to respond to--

Mr. Chairman: I will leave it up to the committee. Do you want to listen to Mr. Graham at this point?

Mr. Ferraro: I move he be heard.

Mr. Chairman: I am going to ask Mr. Gillies to assume the chair. Mr. Gillies, can you assume the chair? I have an appointment.

Mr. Gillies: Yes. I just have to cancel a couple of things.

Mr. Chairman: Mr. Graham, do you want to come forward, please.

Mr. Graham: I am sorry to inconvenience you.

Interjections.

The Vice-Chairman: Mr. Graham, Mr. Wawrew, please proceed whenever you are ready.

Mr. Graham: Thank you for your indulgence regarding the scheduling.

Mr. Wawrew: I just have a few words to say before Mr. Graham makes his summation.

One of the questions some of you might have asked when I appeared here the first day is, why am I here? I was not called by the public accounts committee to appear here. Let me tell you why I am here. I do not particularly have an axe to grind with anybody. Why I am here is to deliver some messages, and I think the messages are very important. I am going to try to detail those messages right now.

On the first day of the committee's hearing, I talked a little bit about the achievements. I think that was important because nobody focused on the achievements and the dedication of the staff, the employees and the work they have put into this company--the hours and hours of work--and the results. I talked about them.

We talked about product selection, selecting excellent products. We have all heard about how good the Mazdamon product is. I can show you press releases on how good the other products are. One paper calls it the dBase of desktop publishing. If people are familiar with the industry, dBase is the top database system from one of the top publishers.

We talked about marketing. We talked about being able to launch four products in the scope of less than one year. We talked about sales and distribution, the fact that we signed up all of the top distributors in the United States and, in fact, top distributors in Europe, Britain, Australia and the Pacific Rim. We talked about the fact that we signed up over 300 dealers throughout North America.

We talked about sales, and other people referred to sales and the fact that in the early months sales were light and they started to rant. In fact, in a period of five months, we sold over \$1 million worth of software in 1986. We talked about the major companies that were using the product: McDonnell Douglas, Boeing, GTE, Firestone, BASF, Bank of California.

We talked about manufacturing and the fact that we established a low-cost manufacturing facility for Canadian software. Through the hearings today, we also heard of the need for a company such as Graham Software. The plan we submitted to IDEA was right on, and we have heard testimony from a number of people stating the requirement for a software publishing firm in Canada, in Ontario, to fulfil this need.

1230

What is my message? My message is that we collectively here need to treat our technology industry very carefully. Let us think about it. Have we all recently treated our technology industry very carefully? The question was asked to Mr. MacKinnon, would he do anything differently if he had it to do over again? I know I certainly would. I am sure most of you who have had to deal with the technology industry and with decisions within the Canadian technology industry would probably look at your decisions and say, "Did I really make the right decisions?" because we are talking about our future.

I certainly would try to refine my decisions if I had it all to do over again. I think if we asked Mr. MacKinnon candidly, would he refine some of his decisions, he probably would. I have had a little bit of experience as a civil servant. I was a civil servant for approximately 10 years in my earlier years. In fact, I was one of the founders of the Ministry of Government Services computer services division. I understand the pressures and the limitations and the lack of incentives in the civil service, but I did have excellent experience in the civil service.

When I worked at the Ministry of Government Services in the computer services division, it was designed as a service bureau to compete with the private sector. It had its ups and downs; it lost money at times and it made money at times. I worked with Datacrown, part of the huge Crownx Corp. That company, a large technology company, had its ups and downs. I recall one year when it laid off I do not know how many people--50 people--but it is still in business because its investors kept it alive. I worked with Terry for a while in Polaris, and I am sure he will tell you about the ups and downs that Polaris had, yet he hung in there and was able to make it a success.

I cannot remember quotes like Mr. MacKinnon, but I have a quick quote out of a book called The New Venturers, which is promoted very highly by Tom Peters of In Search of Excellence fame. It is a very short quote:

"Do most startup companies encounter a crisis at some point? The answer: All. Is that a Murphy's law of the venture business? Yes. It is not a question of if something will go wrong, it's just when. As this snippet of a conversation with one venture capitalist suggests, trouble is a dividend he expects with every investment."

The message is, we have to treat our technology industry very carefully because it is our future. In analysing would we do something differently, how many options were looked at in the Mazdamon sale? There was a Canadian company vying for that product. If ODC was disenchanted with the management of Graham Software, could it not have helped that Canadian company keep the product in Canada? The product is a very significant product when you view the future strategy of the information processing industry.

I think it is important to ask ourselves those questions and I think, if I can just say it one more time, it is very important to treat our technology industry very carefully.

The Vice-Chairman: Mr. Graham, you have approximately seven minutes.

Mr. Graham: I hope so; maybe six.

I want to open by addressing some of the allegations that have been bandied back and forth. There have been several and several have been conflicting. I will stick to the facts regarding them. We were described as unco-operative; I think the term Mr. Epp used was "stonewalling."

To quote from the Sharwood report, "Terry D. Graham, president, has been co-operative and we have had several meetings reviewing his program and his efforts to bring in additional financing."

To quote from the Laventhol and Horwath report, and you have to keep in mind this is our third or fourth inquiry, "Graham Group management...have been co-operative and responsive, providing or attempting to secure for Laventhol material requisitioned and required in order to enable Laventhol to complete its assignment."

As well as this, the Office of the Provincial Auditor requested all financial and related documents, and those were provided, as well as facilities to duplicate those documents.

Of course, the entire committee was not present, but if you will think back to when Mr. Wigdor and I asked for an in camera meeting with the committee, our main concern was that this committee would go forward and not continue to be stalled by ODC, and that the information would be allowed to go forward and not be in a situation to hide behind current planned litigation. I cannot help but feel that is co-operative at every stage, with every outside and independent group that we have had contact with.

Management: There has been much stated about the management of Graham Software. In spite of the fact that it was staffed by the most experienced and successful people in the Canadian software industry, Graham's cash flow requirement was not at any time a result of lavish salaries and expenses. The information provided to the auditor supports that many of the senior executives underwrote their own expenses and did not take salaries for several months. Those allegations are completely not factual and they have to be dealt with very seriously.

Such was the commitment of the senior executives of this corporation, at considerable personal financial peril, because they believed in the concept, and they proved that belief in a strong and financial representation.

As well, I would like to quote regarding the management of Graham Software, and I will quote the Provincial Auditor, who stated that in his opinion, based on the information supplied, Graham Software did spend the money invested by IDEA in accordance with the terms specified in the agreements.

I will continue and quote Laventhol and Horwath, "We have found nothing to indicate that there have been any improprieties with respect to the funds, investments, advances, intercompany transactions and allocations of funds for the corporate group."

By the way, these are the two financial institutions that actually took the effort to come to our location and to go through these figures.

Graham and its financial partner, IDEA Corp., planned from the outset an aggressive marketing strategy aimed at rapid growth and expansion. By the time Graham was informed that it would not be eligible for its previously planned capital requirements, no matter how severe our cutback, the holding pattern could only last so long before new capital was required. Despite continued efforts on management's part to raise capital, run the operations with the barest skeleton of support staff and supply countless reports and requests for information--I keep reminding you this is not our first inquiry; we have had a long stream of them--the task proved too large and the efforts turned to liquidation of assets and the disbursement of funds among shareholders.

1240

Mr. MacKinnon stated: "When Mr. Graham met with me in August of 1986, he blamed publicity surrounding IDEA Corp. for his failure to find new partners. I did not agree with that view because the publicity"--at the time--"only involved IDEA. There was very little negative publicity, if any, surrounding Graham Software at the time."

I refer to the Provincial Auditor's report, "There were several public statements and discussions in the Legislature that may have created uncertainty about investing in Graham Software." As the Provincial Auditor puts it, one of the several, "On June 10 through June 12, 1986, questions were raised in the Legislature about Graham Software."

The allegations raised in the House were carried in every paper from one end of this country to the other and Graham continued to be lumped in with Wyda and Exploracom in every one of those scenarios, yet Mr. MacKinnon states that in August there was virtually no bad press at all.

Mr. MacKinnon brought up the other day what I consider to be three very important principles. The first was to preserve and enhance the value of the investments. That was his number one criterion as far as he was concerned.

I refer to the Provincial Auditor's report, "In our opinion, ODC's actions were primarily focused towards recovering as much as possible" of the investment made in Graham Software. That seems to be quite in conflict with "to preserve and enhance."

The second very important point is: "People with ideas are to be supported. Influence counts for nothing."

Mr. Sargent: Their intent is including insolvency.

Mr. Graham: That is correct.

The Vice-Chairman: Mr. Sargent, the committee is just hearing closing statements now.

Mr. Sargent: It felt good. I had to say it.

The Vice-Chairman: It was agreed there would not be questions from members of the committee. Mr. Graham, please continue.

Mr. Graham: Let me repeat that: "People with ideas are to be supported. Influence counts for nothing." I do not think I have heard one person who testified to this committee say that the Graham Software concept was not good for Ontario, was not good for the Ontario software community and was not needed by the software community. I would say that would be probably a fairly strong recommendation, considering it is unanimous, that it was a good idea.

As to the second portion of that, regarding influence, he is absolutely right. Influence counts for nothing. Perceived influence counts you out.

I thought the third point was a very important point, "Every dollar of public funding is to be treated with respect in recognition of the effort made by the taxpayers to generate it in the first place." I hope that would also apply to after-tax dollars because I certainly had a lot of those invested in this corporation, and I can assure you they were both spent with due respect.

Graham was put into a very tenuous position, caught between two extremely powerful forces at a very important time in the formation and continuance of our provincial government. That, combined with what are obviously policy and direction changes, put Mr. MacKinnon and myself in a situation where we did not have an opportunity to enjoy and work together in the goal that we have strived so very hard to achieve with IDEA.

Mr. MacKinnon mentioned yesterday that he felt my comments about Bob Winter were damning. Those comments were not directed at Bob Winter. David MacKinnon and Bob Winter are very experienced, very good and very dedicated civil servants. Accordingly, they carry out the policies that they are directed to carry out. I think, however, Mr. MacKinnon and Mr. Winter should be given an opportunity to embrace what Mr. MacKinnon described as his number one priority, to preserve and enhance the value of the investments. I find it impossible to believe that they were in a position to do that or that they were instructed to do that, and I think Mr. O'Neil has to be stopped.

The information that has been provided to us indicates there are 11 more companies awaiting the executioner's blow, to add to the number that have already gone down. Let me add that I cannot believe for a second that our current, or any past, present or future Premier would condone that type of action by a minister. It disappoints me, and it is a damning blow to the progress of technology of this province.

The Vice-Chairman: Members of the committee, we have two options now and I would ask for your direction. Mr. MacKinnon has informed the clerk that ODC has one statement to make that will take about 10 minutes. We can either hear it now, or we can come back at 1:45 p.m. and hear it then. What is your wish?

Mr. Wildman: It would be nice if we could have some lunch. I have an appointment at one o'clock, so I do not have a lot of time for it.

The Vice-Chairman: Can I ask committee members to be here promptly at 1:45 so that we can try to keep on track with the courthouse inquiry.

The committee recessed at 12:45 p.m.

CA2DN
XC21
- P73

P-67

STANDING COMMITTEE ON PUBLIC ACCOUNTS

GRAHAM SOFTWARE CORP.
COURT FACILITIES

THURSDAY, MARCH 26, 1987

Afternoon Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Sargent, E. C. (Grey-Bruce L)

Smith, D. W. (Lambton L)

South, L. (Frontenac-Addington L)

Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South

Gregory, M. E. C. (Mississauga East PC) for Mr. Davis

Hennessy, M. (Fort William PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Ontario Development Corp.:

MacKinnon, D., President and Chief Executive Officer

Cass, B., Director, Legal Services Branch

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor

Mishchenko, N. J., Director, Special Assignments Branch

From the Ministry of the Attorney General:

Chaloner, R. F., Deputy Attorney General

From the Ministry of Government Services:

Raymond, G. J. M., Deputy Minister

Guy, T., Executive Director, Property Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, March 26, 1987

The committee resumed at 1:50 p.m. in room 151.

GRAHAM SOFTWARE CORP.
(continued)

Mr. Chairman: I see a quorum; I will call the meeting to order. Mr. MacKinnon, I think you are aware we are not going to be rigid on this. I will indicate some flexibility, but we had earlier indicated approximately 15 minutes for each group to make a summary statement, if you would like to proceed.

Mr. MacKinnon: I will try to keep it as brief as I can. In the last few minutes of this morning's testimony, I think my colleagues and I respected, in a sense, the growing, increasingly constructive nature of the dialogue in many respects, and the change in tone that had taken place, in our view, was not unimportant. I think we would like to view the matter in very much the same way ourselves.

In that vein, perhaps I could comment briefly on some of this morning's testimony. First of all, I noted the new discussion of the conflict-of-interest issues that were discussed briefly this morning, particularly in relation to Messrs. Cannon, Douglas and Blakley. Perhaps I could make a few comments to repeat the position we have taken on that.

It is our view, and I would like to remind the committee of my testimony yesterday, that Mr. Cannon and Mr. Douglas were in a conflict-of-interest position. However, it is also our view that both are very competent people, and I speak with considerable knowledge with respect to Mr. Cannon and what he has done for the government, what he has done for IDEA, what he has done in his life, because I have had it reviewed thoroughly. I believe him to be a person of outstanding capability and I believe the administrative conditions during the wind-down of the IDEA Corp. to have been uncertain and turbulent.

Therefore, while I believe that my testimony yesterday was completely accurate and complete in every sense, I also believe that my description of the conflict position in which both gentlemen were is considerably mitigated by the uncertainty of the times within the agency, understandably so, and also I think both men have made considerable contributions. Both will in the future. Both are young enough that I think there are many real prospects for both of them. My colleagues and I have a strong hope that, however this thing turns out, the particular prevalent conditions that bear upon the situation in which they found themselves will be borne in mind by the committee.

Again, with respect to Mr. Blakley's testimony, I understand exactly his concerns and agree with some of them. I and my colleagues know, for example, it is always easy to be very critical when you look after the fact at what people did. I have used the phrase before this committee, but the goalie always look like hell in the instant replays.

We know that, and whenever we lose on a loan, whenever we have problems, we are examined by auditors long after that. We are examined by the standing

committee on government agencies and we have to deal with many of the same kinds of problems that have arisen in previous testimony on this case. So we have some considerable sympathy to all the judgements that we have made, certainly, about the IDEA Corp. management. They have been made, in large part, in terms of retrospective judgement, and that is always easy to do.

In terms of Mr. Wawrew's testimony, again, I and my colleagues would find much that we can agree with in what he said, particularly in the management of technology and how careful and precise you have to be. The venture capital business and, indeed, the private market and government programming are all built on the fundamental principle of merit. I refer you back to my comment that it is only merit that counts. In that sense, some hard decisions have to be made. It is our view that those hard decisions really centre on the fact that those who have ideas, who can demonstrate competence and integrity in management, merit support from government and those who do not, do not.

The general context of managing technology-intensive enterprises carefully is a statement that we understand, and Messrs. Winter and Cass, who have been at it much longer than I have, in particular have long experience in dealing with some of the issues that arise. We are never hesitant to add to our experience, as I believe the record of this case shows, with the outside advisers and contributors on whom we have drawn.

We have no sense of our own omnipotence in making judgements of the kind that we are always called upon to make. We recognize that some day, some of them will have been wrong. In that sense, what we are playing is a game of probability. As the record shows in this case, we do our best to narrow the range of uncertainty and to make those judgements as completely and clinically as we can. I believe in this case that we have done so properly.

I take a somewhat different view for reasons I would also like to explain with respect to the comments, both today and throughout the previous sessions, of the other two principals of Graham Software. I would like to be able to make comments of the same vein that I have made about others, but I do not think I can. In all candour, I have sat here and listened for days, as have all of you, and I still have many of the same concerns that I had when I started.

It is my view that we do not know where the money went in this company. In this morning's testimony, reference is made by Mr. Graham, in particular, to comments made in the Provincial Auditor's report and in the Laventhol and Horwath report, but neither made a complete audit of this company. We have not had an audit of this company since 1985, and therefore, in my view, we still do not know what happened to the very large amounts of money that have flown through it. That is the first concern.

The second concern is that in cases like this, my colleagues and I, our board and the ministry cannot just fold up our tents, hope that we have learned everything we can and go on to the next case. We have to run programs efficiently and effectively, and we have to achieve standards with which we are happy. We have to pursue the goals the government has clearly instructed us to pursue, which are those that are described in my opening statement. To do that, we have to know everything that is knowable about these cases and we have to ensure we have learned everything that we can learn. I do not think we are yet at that point.

Everything--and I say this with regret as well as irritation, to be

candid--the other two principals said this morning in their testimony continues the same pattern we have found throughout our dealings with this case. We believe, and we will so submit in our written statement--I will not carry on today--that nearly every specific comment made by Messrs. Graham and Wigdor this morning is wrong. We believe our concerns about their observations have been substantiated by other testimony that you heard.

Mr. Cannon, for example, clearly stated that at the time the IDEA investment was put in, there was no contemplation of any other investment by the government. He stated that clearly and unequivocally. Yet one of the two or three central themes of the Graham Software Corp. case was that the government--this agency in particular--had not followed through on previously established commitments. We now know that fact to be completely wrong.

1400

Second, while Mr. Wigdor did apologize in relation to his erroneous comments with respect to the Biddell inquiry, the fact of the matter remains that we are before the standing committee on public accounts. If we had not been very well prepared in relation to the specific facts of the matter, we have a sense that many of the specific facts might not have come out.

There are other things that the company did not say. Again, I promise to be brief. For example, we have maintained throughout that the government of Ontario and the Ontario Development Corp. cannot be expected, under any conditions, to put money or resources into companies that cannot perform such basic functions as keeping track of how much money is coming in and how much money is going out and where it all is. We will not do that now and we will not do it ever.

Despite my very serious allegations about the state of the financial records in the company, I notice the company made no substantive observation on that question. The reason they did not is because two accounting firms have certified to us that that is the actual state of conditions within the company.

It is my view that something fairly serious is at work and that the pattern of the Graham and Wigdor testimony continues it. I want to assure the committee of one thing; I said it yesterday and I shall say it again. We will find out what has gone on. We will do what we can to find out where every nickel came from and went to in this company. Until we receive a fully satisfactory explanation for all those matters, we will continue to search out the facts with every responsible means at our disposal.

In closing, I stand by my testimony yesterday. If I had to do it over again I might, as Mr. Wawrew said, refine a few decisions but I would do nothing different. We believe that the appointment of Mr. Winter to the board, the rejection of further funding--even though, of course, none was promised--the Sharwood review, the actions we took with respect to the Mazdamon sale, the negotiations with Laventhol and Horwath and the court applications all demonstrate a record of consistent attention to this investment down to the finest detail.

It is perhaps the extensive nature of our efforts in this case that really has us worried the most. No agency can possibly manage adequate programs for the economic development of this or any other province if it is bogged down in cases, litigation and problems of the kind you have reviewed in detail and will continue to review.

If we have to deal with companies that practise paper-entrepreneurship of this kind, then encouraging economic development through normal programs will be very much like pushing on the end of a spaghetti noodle: whenever you push you will not get very far and the thing will curl up in between.

We view it as being very important, in terms of the future management of government programs, to understand how we can make sure these cases do not come up in the first place. That is another major objective we will certainly be pursuing in the future in relation to our activities in Graham Software Corp.

This will be my final comment. I do want to assure you that we have already learned a great deal. In recognition of the labour intensity of this case and others, the Management Board of Cabinet has recently approved a very significant augmentation of the resources we will be devoting to the IDEA portfolio. In our new program, Innovation Ontario, we have absorbed many of the problems that this case exhibits. In particular, in the light of the experience learned in IDEA, we have limited the scale of investments in that corporation to something in the order of \$250,000.

In that sense, much has been absorbed, much has been learned, and I think we can continue to move on in the future.

I think that is all I have to say. In summary, we are proud of the corporate effort that has been made in this case. We think we have handled it correctly, with integrity and decency. We think we have faced a very serious problem that we do not want to face again.

Mr. Sargent: You did nothing but put them out of business.

Mr. MacKinnon: We will continue to carry on, to ensure that the only basic qualification for the economic development programs of the government of Ontario is merit.

I have concluded. Mr. Cass has one brief observation he would like to make.

Mr. Chairman: Be brief, please.

Mr. Cass: I am speaking to the new information that Mr. Wigdor put forward this morning. He brought new evidence to the committee indicating there had not been one board of directors meeting but there had been four called and Mr. Winter had attended only one.

I want to draw your attention to the fact that on January 26, Mr. Wigdor provided a notice to the directors on the meeting of January 29. That occurred one day before Mr. Winter was going into the hospital. I attended in Mr. Winter's place because I was to be the new nominee of ODC on the board of Graham Software.

I will give to the committee a letter that explains what happened on that day. I went to the board of directors meeting. Mr. Graham and the other director, Miss Nancy Herckimer, were there as well. They refused to meet with me and they refused to have the meeting. I would tender this letter to refute part of what Mr. Wigdor has said, the inference that we were not, nor did we choose to be, at these directors meetings.

Regarding the second-to-last board of directors meeting, which Mr.

Wigdor suggests we did not attend, I give to you item 76 in our presentation, which shows the directors meeting was not held. There was a consent, as permitted under the Business Corporations Act, that in lieu of a meeting the directors all sign a resolution. Here is the director's resolution that is signed by Mr. Winter.

The only other directors meeting of which notice came to me was the proposed meeting of November 3. At that meeting, there was going to be tabled a recommendation that all the significant assets be sold for nothing. I advised Mr. Winter not to go because to do so would encourage the company to be giving away assets for which the taxpayers had paid \$5.1 million.

Last point: Mr. Wigdor says that in the latter days ODC has not co-operated with Laventhol and Horwath. I tender this letter, which indicates what we have always explained to Laventhol and Horwath. After February 7, the government was no longer a shareholder in Graham Software. We were not going to continue any more payments of the taxpayers' money to Graham Software. We said that.

What Mr. Wigdor has said is, "Will you continue to pay for a study of Graham Software while you are not a shareholder?" I explained that to Laventhol and Horwath, and I put this letter in for your information and background in terms of why ODC is no longer willing to pay for the bills of Laventhol to undertake a review of Graham Software. I leave these with you, if I may.

Mr. MacKinnon: Thank you very much, sir, for your attention and that of the members of the committee.

Mr. Chairman: Thank you, gentlemen.

Mr. Sargent: The applause is deafening.

Mr. Philip: It is the same applause as everyone else got.

1410

COURT FACILITIES

Mr. Chairman: We will now move on to the second item on our agenda, the courthouse facilities in Ontario. The first witnesses appearing before us this afternoon are representatives from the Ministry of the Attorney General.

Mr. Philip: I thought it was agreed yesterday that the first item of business would be an opportunity for the Provincial Auditor to present some information on his report, and for us to ask him some questions. That was decided on yesterday, and I certainly would like to question the Provincial Auditor on the processes used in some of his conclusions.

Mr. Chairman: That was my understanding as well when I arrived here, although I was not privy to the conversations yesterday. I asked the Provincial Auditor before getting under way if we were going to have an in camera session, and I was informed no, but he was prepared to make a comment at the outset and perhaps answer some questions. I assumed that was simply because of the delay. It may be rather unsettling at this stage to go in camera for half an hour.

Mr. Philip: No. What was decided on yesterday was that we would not

go in camera but that we would have an open presentation with a few comments if the Provincial Auditor wished on this report, as is the custom, and some very brief comments or questions from members of the committee.

Mr. Chairman: I see nothing wrong with that. There is nothing wrong with the witnesses remaining where you are. Hopefully that will not last too long. Mr. Archer, do you want to make some comments?

Mr. Archer: Thank you. I will just take three or four minutes to try to summarize the content of our report. Last spring, Mr. McAuliffe of the Canadian Broadcasting Corp. raised a number of concerns about courthouses in Ontario, on CBC Radio. Following these broadcasts, the public accounts committee considered the matter and passed a motion in June that the Provincial Auditor review the reports of Mr. McAuliffe and report back to the committee.

We were given a cassette tape and transcripts of Mr. McAuliffe's radio report. During the course of our review we met with representatives from the ministries of the Attorney General and Government Services, the two ministries involved with court accommodations. We also examined all related documents and records and visited all the courthouses. This involved some 10 locations and some 25 facilities that were mentioned by Mr. McAuliffe in his report.

Our approach was basically designed to examine each of the comments or criticisms contained in the radio report through visual inspection, examination of records and discussion with appropriate officials. In all, we talked to some 50 to 60 people in this regard, all in the endeavour to arrive at an objective assessment or conclusion concerning the accuracy of the particular comment or criticism. Where we felt the comment was valid we undertook to determine if corrective action had been taken, and if not, why not.

The report we have prepared and submitted to the committee reflects our audit approach. Each radio comment is italicized, followed by our assessment of the comment and supplemented by commentary supporting our assessments. There are approximately 50 comments, and they are dealt with in pages 8 through 44 of our report.

In addition to our attempt to assess each individual comment, we endeavoured to assess the situation overall. This we felt was necessary because the background theme or condition portrayed by the radio reports was that the courthouse facilities in Ontario were in a state of neglect.

Our overall conclusions are indicated on page 2 of the report. Essentially, they are as follows. Without doubt, there are many problems and deficiencies that need to be corrected in the courthouse system, and many of these have been identified in the radio reports.

Having said that, "we also feel that many of the issues raised in these reports were not as serious as implied or involved relatively minor matters." On balance, we do not feel that "these shortcomings are...sufficient to conclude that the courthouse facilities in this province are in a state of neglect."

This opinion is based not only on our analysis of the particular reports but also on our belief that the sample of 10 locations and some 25 courthouses from a total of 243 court facilities in Ontario was not representative enough to conclude on the general conditions of courthouses in the province.

We acknowledge and emphasize that the conclusions stated in this report are strictly the opinions of this office. However, we believe strongly that they are objective and informed opinions. None the less, any readers of the report, committee members in particular, may well disagree with some of the conclusions we have reached, and we would be pleased to discuss any or all of the comments. For this purpose, we have in attendance this afternoon Mr. Mishchenko and Mr. Tersigni, the two members of my staff who are the most closely involved with this review.

Mr. Chairman: Thank you, Mr. Archer. Do you have any questions for the auditor?

Mr. Philip: I want to say first that if we go point by point in the auditor's report, it substantially shows that the original allegations, which were numerous, were completely or almost completely substantiated.

Having said that, I think there is an unfortunate use of language in the report, and I would like the auditor to respond to that. Rather than have a series of questions, let me make a series of points, and then perhaps he can quickly respond to each of them.

The first is language. I submit to you that the language in this report tends to downplay the seriousness of the individual problems. The problems may not be serious in a monetary sense. When you have a situation such as that of a woman who has been raped waiting in a small room for three or four hours with the person who is alleged to have raped her, that may not be a large financial problem for the province, but it is a very serious moral problem and a very serious problem to the person affected.

Throughout this report, we see a series of downplaying of the legitimate points that were made, the legitimate problems that were pointed out, by saying they were "substantially correct." I suggest that to the man on the street "substantially correct" means that for the most part they are correct, but that there is something wrong. Yet when you go through each of the ones that are labelled as "substantially correct," you find they are not substantially correct; they are absolutely correct. In fact, Mr. McAuliffe and myself, in the allegations we made, were proven to be absolutely right on each of those points marked "substantially correct." Why not at least give us credit that we were right on those points?

1420

Likewise, in several instances the corrective action promised by the Attorney General (Mr. Scott) is vague but none the less seems to be accepted by the auditor. I refer you to page 18, as an example, "The ministry has indicated that corrective action has been taken, or is currently under active consideration, for 47 of these items." I have been around here for 12 years, and I can tell you that when a minister gets up and says, "The matter is under active consideration," that means he wants me to go away and hopes that if it is raised again in another two years, it will be still under active consideration.

Again, this is an example of unfortunate use of language that undermines the serious nature--I do not want through all the examples or we would here all day, but look at, say, page 13: "There are no elevators in the building. Consequently, handicapped people do find it difficult to move from floor to floor." The word "difficult" is very unfortunate. If you are in a wheelchair in that courthouse and you want to get to the second floor, you have only one

way of getting there; that is, to be carried up and down the stairs. The unfortunate thing in that area is, the police have refused to do it, for legitimate reasons. What happens if they drop the person and he sues? It is not difficult to go up; it is impossible to go up unless the particular person, be he an accused or a witness, is able to go to the nearby Canada Manpower and hire a couple of guys who are willing to carry him up the stairs.

In some instances, the rationalization are accepted completely at face value. For example, there is an underlying assumption running through this that many of the problems are of a private nature. The statement is made: "These are facilities that are rented from private enterprise landlords." If you happen to be in a small town in Ontario and happen to be the owner of some premises, often you are very anxious to get those premises rented to the government; so the lessee--namely, the Ministry of Government Services and the Ministry of the Attorney General--has some bargaining power to see that the landlord brings his building up to fire standards and proper standards so they can be used.

In many instances, some of the conclusions are simply not borne out by the additional information, which could have been obtained. For example, on page 10, the report states none of the parking spaces are available for public use but there are parking spaces nearby. The problem is that the parking spaces nearby rent for \$9 a day, and if you happen to be in court, if you happen to be a single parent going after custody of a child or support payments, or whatever, \$9 is an awful lot to pay for a half-day or a day in court.

I could go on and on. The major concern I have, I guess, is that if we look at this, the very people who are the users, with very few exceptions, and indeed many of the people whom Mr. McAuliffe interviewed, have not been interviewed, as I understand, by the Provincial Auditor and his staff.

Last, unlike other auditor's reports, this report in no way looks at who is to blame and why a particular misuse or squandering of funds happened. The best example of that is in the St. Catharines courthouse, where there were major construction problems and indeed problems concerning the plant facility itself, yet at no time was there an attempt to try to find out who was to blame and why the heating system in a new building had to be replaced or overhauled for the most part? That kind of question does not seem to have been asked.

In the case of the St. Catharines courthouse, and perhaps one or two others, it might be worth while for the committee to go out to examine them. I have several other examples. I have visited some of these courthouses, and I am pleased that the facts seem to substantiate the point-by-point conditions we have made. Unfortunately, there seems to be a great deal of rationalization in accepting the platitudes and rationalizations of the Attorney General's office and the Ministry of Government Services.

Mr. Archer: Do you want me to attempt to respond?

Mr. Chairman: I am assuming you would like the auditor to respond, Mr. Philip.

Mr. Philip: I would be pleased to allow him to respond.

Mr. Archer: It would certainly be much easier to respond had you identified these things one at a time instead of 10 or 12 at a time. However,

let me try to pick out a few I managed to jot down.

One you mentioned latterly was that we failed to indicate who was to blame in a lot of cases where facilities were less than adequate or where money had been spent to correct deficiencies in construction and what have you. I do not think that was within the terms of our mandate. We were asked to review comments. Our understanding was that you wanted to determine whether there was any validity to the comment, and that we attempted to do.

I would think, in the example you illustrated in St. Catharines, if you try to find who is to blame, you would want to talk to the people who are responsible for the accommodation in question. The two ministries that are involved have representatives here today, and I am sure they can comment on that.

As to not talking to the right people, I do not know who these people are whom you have in mind, but I did mention in my opening remarks that we talked to some 50 to 60 people in the course of our review. We might not have talked to all the right people, but we certainly talked to a lot of people.

As to the language, you seem to feel we have downplayed a lot. In our minds, we feel we were very objective about this. We tried to go in with an open mind and report impartially, and we feel that we have. If you interpret our language as being downplayed, then I guess we just do not feel as strongly or did not react as strongly to some of the things we saw as you and Mr. McAuliffe have.

I am surprised you have taken exception to the term "substantially correct." That is a standard auditor's term that we use whenever something is to all intents and purposes correct yet might not be 100 per cent correct. To take an example, in the first one we give on page 8; the comment says: "This is a \$50-million facility scheduled to open on August 1986. It took 10 years to plan and build." When we investigated it, if you look at the chronology, it took eight years. So while the comment is not 100 per cent correct, it is substantially correct. In substance, it is correct. I do not know what more you would want us to say in that case.

As to vague answers about perhaps why the situation is the way it is or why corrective action has not been taken earlier, again I think the ministry people are here to try to answer that. We did not feel it was part of our mandate to try to find out the reasons for the delays in any depth, other than to indicate perhaps lack of funds or that it was not on the priority list.

You refer to the situation for the handicapped, on page 13. We took the term "handicapped" to be a little broader than just people in wheelchairs. Certainly if you are on crutches or what have you, you can get up the stairs; it is a little more difficult than going up in an elevator. Also, the comment says you cannot get out. Literally, that is not true. You can get out the same way you got in. If you were carried in, you can be carried out. That is the reason we said it is substantially correct rather than 100 per cent correct.

Mr. Philip: What about the one above it?

Mr. Archer: The rape victim?

Mr. Philip: No, the one on page 13.

Mr. Archer: We could possibly concede. In that case, we probably

could have said it is correct. The point we were trying to make there was that the comment implies that these two people, the witness and the accused assailant, are sitting together alone. There is a police officer in the room with them. Certainly that has to have some modifying influence on the intimidating atmosphere. That is why we chose to say "substantially correct" as opposed to "100 per cent correct."

Mr. Philip: I did not say there was no police officer in the room.

Mr. Archer: You did not say that, but there is an implication that he is not there. We felt we should clarify that.

Mr. Philip: You are fishing for that one.

Mr. Archer: I do not think so.

1430

Mr. Epp: This tirade against the auditor is very unfortunate and I think we can get on with the business before us.

Mr. Ferraro: I have a comment to make too.

Mr. Chairman: You will all have. Mr. Philip is a member of this committee. He has his allocation of time and he is using it up as he sees fit. Let us continue.

Mr. Archer: I have one or two more I have jotted down here. On page 9, I guess, the reference was to the cost of parking being \$9 a day. Our review showed it was more like \$6 to \$8, but Mr. Philip's point is right. When a juror, or at least a witness, or whatever, has to come, he has to pay \$6 minimum to park his car if he is there all day long.

On the issue of accommodation that is not government-owned, we have outlined in the report what the ministry's viewpoint is on putting money in or even attempting to influence the landlords in these cases. Here again, it is a situation that if you do not like what we have said--we have laid out the situation as it is--it is a matter to be taken up with the ministry officials.

That is all I have to say.

Mr. Chairman: You still have a few minutes, Mr. Philip.

Mr. Philip: Let me deal with a few specifics. Can you give us a list of the people to whom you did speak?

Mr. Archer: By facility?

Mr. Philip: Yes.

Mr. Archer: Here. Do you want to pick one?

Mr. Philip: All right. How about the St. Thomas-Elgin county courthouse?

Mr. Mishchenko: I can respond to that.

Mr. Archer: All right.

Mr. Mischenko: We spoke to Ron Lake, the sheriff and May McLandress, the deputy sheriff. We spoke to a court constable, Jim Lyon who is the leasehold administrator and Mrs. Daniels who is the deputy county clerk-treasurer of St. Thomas.

Mr. Philip: Since the most outspoken person about the facilities was Michael O'Dea, the immediate past president of the Elgin Law Association and since he was the one interviewed by Mr. McAuliffe on the radio, why would you not have contacted him and asked him for his comments?

Mr. Mishchenko: In this particular situation, the issues had been identified in the tapes by Mr. McAuliffe. Those were also from interviews with Michael O'Dea. All the allegations that were made in those tapes were part of the review we conducted. Accordingly, any issue that would have been brought up was followed up by us, and we did not feel it was necessary for us, in that situation, to go any further. We felt comfortable and confident with the conclusions we reached on the St. Thomas facility based on the information we had.

Mr. Philip: So you felt comfortable with the side of the government without going back to the person who had made the allegations and asking him whether he had any additional information?

Mr. Mishchenko: I do not think that is a fair comment, Mr. Philip. We went in there and did our own impartial review. Where we felt it necessary, we talked to who we felt were the appropriate people. It was not on the side of the government; it was an independent review conducted by this office.

Mr. Philip: At the bottom of page 11, it says: "During our visit, we confirmed that there were no fire alarm system, smoke detectors or panic bars on the doors. The building did have a fire escape on the exterior, but it terminated on the second floor onto a high roof."

What would you do if there was a fire on the ground floor and you had no way of getting to an exit because you did not have an exit bar on the door? What do you do if you happen to be on a higher floor and you do manage to make your way to the fire escape? Since it only goes to the second floor, do you jump from the second floor down? Is that a safe fire escape system to you? Why have you not commented on it, instead of simply saying that there are some kind of facilities?

Mr. Mishchenko: I think we have commented on it. Basically, what we have done is confirm that the allegations were correct. The appropriate people to ask are the people responsible for the facility. We have not said that it is not a problem.

Mr. Philip: Can you tell me who you spoke to in the St. Catharines courthouse investigation?

Mr. Mishchenko: I spoke with Roy Gram, the sheriff; Jim Turpil, the building superintendent; Harry Higgins, who is the district manager from the Ministry of Government Services, and Mr. Baskerville, who is the police sergeant from the St. Catharines police force, and also with appropriate people at the head office of MGS and the Attorney General.

Mr. Philip: One of the groups of people who were most concerned about the St. Catharines courthouse facilities were the employees and, indeed, the union met Mr. McAuliffe and myself down there. The union, as I recall, was

interviewed and some of the clerks and people of that nature were interviewed. I also spent some time with Mr. McAuliffe and a judge who was very critical of the facilities. Why is it that the union or its representative at the St. Catharines courthouse was not contacted?

Mr. Mishchenko: Again, Mr. Philip, we tried to follow the motion of the committee, which was to review the allegations made by Mr. McAuliffe in his reports. What you are describing now is really an extension, something other than what we had contemplated in the motion.

Mr. Philip: Mr. McAuliffe, in his report on St. Catharines, as I recall, alleged that there were health and safety problems there. In his report the union, or a representative of the union, spoke about those health and safety problems but you chose not to go to the union and ask what had been done to correct it.

Mr. Archer: There was no haziness about Mr. McAuliffe's allegations. We have detailed each one of them and there was no need to go back to the people that Mr. McAuliffe interviewed to find out if that was what they really said. We took his comments at face value and made an objective assessment as to whether that was the case or was not the case.

Mr. Philip: Let me suggest to you that if you had gone to that much trouble you might have found then that there was a health and safety report by the Ministry of Labour that had not been followed in St. Catharines.

Mr. Archer: That was not mentioned by Mr. McAuliffe. Had it been, we would have followed up on it.

Mr. Philip: It was in one of his broadcasts. I thought you had the tapes of all of his broadcasts.

Mr. Chairman: You have one minute, Mr. Philip.

Mr. Philip: Do you not consider the intimidation of a woman who has to spend time in a small room with a person who is alleged to have raped her to be a serious problem? Why would you not have highlighted or demanded, or been incensed at that? The report does not seem to give that feeling of urgency to some of these cases.

Mr. Archer: We said that comment was substantially correct. I did not think it was up to us as auditors to go out and insist that corrective action be taken immediately before we left there. I mean the corrective action has to be taken by the people who are responsible for the accommodation.

Certainly, that is a serious situation. We are not saying it is not. We are just giving our objective assessment as to whether Mr. McAuliffe's statement was correct, and it is substantially correct.

Mr. Philip: I guess what bothers me is that in your other reports you invariably say the ministry failed to do this, this and this. It seems to me that something as basic as either protecting the safety of a judge or protecting a witness or an accused, or in this case someone who has been wronged by an assailant, would be one area in which you would at least want to say that an error of judgement in planning or whatever, had been committed. Yet I find none of this. It is purely a description of "Yes, this seems to be the case" and then a reiteration of whatever the ministry told you, without going to the people who have been most affected.

Mr. Chairman: You may comment, Mr. Archer, and then we will move on.

Mr. Archer: I fail to see how you have concluded that we do not take any of this information seriously. What we have done is said, "Is Mr. McAuliffe's comment correct or incorrect, in our opinion?" We have not commented on the relative seriousness of the comment.

Mr. Ferraro: First, I want to say without hesitation that I am sure everybody in this room knows that everything in life can be improved upon. I say that from the standpoint that it is no exception, when we are dealing with a specific issue such as the courthouses in Ontario, that indeed there are problems--according to the report of Mr. McAuliffe and the auditor's report that has been presented--and they will be dealt with by this committee when we talk to the various ministries responsible.

1440

However, at this point, I want to refer specifically to the motion of Mr. Philip and the pertinent part: "Ordered, that the Provincial Auditor review the reports of Mr. McAuliffe and the issues raised in the attached materials and report back to the public accounts committee no later than November 1986."

With that clear mandate, Mr. Chairman, I believe the auditor has compiled, indeed, a more than thorough report, given the mandate.

I will say without hesitation that the auditor and his staff have, to my satisfaction in my two years here and from discussions I have had with members who have been here longer, always surprised us with the thoroughness, fairness, honesty and the degree of work put into their reports.

Having said that, I take exception to the language--and I will use Mr. Philip's word--in his condemnation of the fact that Mr. Archer and his staff have presented another, in my view, thorough report. I suggest to you that what Mr. Philip really wants is a report that he can write that Mr. Archer can sign.

I will conclude by saying that in my view I am proud to say Mr. Archer and his staff have done another excellent job. I pray to God and I will do everything in my power to make sure they never have to investigate me. Thank you.

Mr. Hennessy: I notice in the report on the review of courthouses in Ontario that Thunder Bay--perhaps you know where Thunder Bay is. Some people here do not realize it is in Ontario or they seem to forget. I have risen in the House and mentioned to the Attorney General (Mr. Scott) about the poor condition of the so-called courthouse in the city of Thunder Bay. If we have a murder trial, we have to have the trial in a hotel.

On the second floor, they have everybody using the same washroom, and if you want to speak to the defendant, the defendant and the witnesses are in the same hallway. There is no protection whatsoever for anybody there. There could easily be a catastrophe, a murder, a shooting, whatever it may be, or intimidation of witnesses. Nothing is done about it. I told the Attorney General and I might as well have talked to the wall.

He is smiling to himself. I do not know whether he has problems, but he keeps smiling and I do not know what the smile is about. I am just concerned

that the people there, especially the lawyers and the judges in Thunder Bay are greatly concerned about the lack of consideration by, perhaps this committee, the auditor or the people who are making the study; I do not know.

When you have to have murder trials in Ontario, 80 per cent of the land is up in that area with 250,000 people. Going as far as the Manitoba border and as far as Manitouwadge and White River, you have to bring all these trials into the city of Thunder Bay but you do not have the proper facilities to hold trials.

I ask this committee, the auditor and the other gentlemen who are here to pay a little attention to the city of Thunder Bay because the lawyers, the judges and the general public of the city of Thunder Bay and of the surrounding area are very much concerned. We look forward to the Liberal government spending some of that money it has on the city of Thunder Bay.

Mr. Archer: The only comment I can make is that I think we and Mr. McAuliffe have observed and agreed, and I think the ministry officials here will agree, that, yes, much needs to be done to upgrade the courthouse facilities throughout Ontario.

The only point we were making is that we did not think the evidence presented to us was enough to conclude that the overall condition of courthouses in the province was in a state of neglect. They may well be, but we do not think the evidence we saw was enough to make that conclusion.

Mr. Hennessy: With all due respect, sir, you have no evidence whatsoever from Thunder Bay. Therefore, it is very difficult if anybody is watching it on TV and sees there is no evidence, it is not being fair to the people of the city of Thunder Bay that there has not been a study, that no committee has gone up there to look at the situation. The judges and the lawyers are complaining and there are numerous letters; I can easily send you all those letters.

One judge did not want to hold a trial there because it was too risky and people could be shot. I have to agree with him, because it is a small hotel. It is not an up-to-date hotel. There is a long hallway and you have a cloakroom there. Everybody walks up and down and passes one another so easily there could be a knifing or whatever. There could be a fatality, and then the first thing you would say is, "The government is going to step in and do something." In all fairness, I suggest the Provincial Auditor should have the committee look at it, because there is a great need.

Mr. Epp: Briefly, as a member of this committee I want to dissociate myself completely from the tirade that we heard earlier against the auditor. The auditor has served this committee and the province exceptionally well for a good number of years. We should get on with the report, rather than with these other side issues that seem to be before us.

Mr. Chairman: We will have two more speakers before we move on to the witnesses. Mr. Gillies and then Mr. Sargent.

Mr. Gillies: There is a lot of very useful information in this report. While it is by no means exhaustive and some of us may have wished it was written with a slightly different focus, there are things in here that cause me a great deal of concern. I am hoping that, as a committee, we can come out with something positive from this exercise and put some focus on the work we are going to be doing in the next day and a half. The focus I would

strongly suggest to the committee is that some of the conditions described in here, under which, in a so-called civilized society, we are keeping people incarcerated and, in some cases, dealing with them, absolutely stunned me.

In the six years I have been a member, on one occasion or another I have toured probably four or five jails in the province and the big Guelph Correctional Centre. I have never seen the kind of conditions that are described in a couple of parts of the province. I agree with my colleague that what we have here is just a sample. There are other very serious conditions around the province.

I invite my colleagues on the committee to look at page 38 of this report and the description of the L'Orignal jail in Prescott-Russell: 10 single cells, three feet by eight feet, in which prisoners are locked from 11 p.m. until seven in the morning, with a bucket if they are in need of relieving themselves. I am trying to recall the terms of the Geneva convention for the incarceration of prisoners of war. I believe that by international treaty, prisoners of war are to be kept in cells bigger than that. I believe it is either eight by five or eight by four.

There are four double cells, six feet nine inches by eight feet 10 inches. There are two people in a room that size. There are two single cells, two feet seven inches wide by eight feet 10 inches long.

Turn to Brampton on page 43. I got very upset when I read this. I felt sick when I read it. "Public inspection panels have stated that the facilities are grossly inadequate. Public corridors are packed because the courts are overcrowded. Cells built for 20 prisoners"--and I am sure they were not built with a generous amount of space for 20 people if it is that old a facility--"hold 70, and air circulation is not adequate."

The public inspection panel stated in 1986: "The corridor was noisy, crowded and poorly ventilated. The holding cells were despicably overcrowded with no juvenile detention area." It goes on and on.

First of all, I want to say to the auditor that I am so glad he was able to bring some of this to light, because I can honestly say I was neither aware nor had I seen these kinds of conditions in some of our jails. If we as a committee try to address everything in here--parking spaces and needing an elevator there and this here--we all know what is going to happen. We will be firing off all over the place and nothing will be done.

I urge us to focus on what I consider absolutely unacceptable and inhumane conditions in which people are being kept in some parts of our province. If we do nothing else but pressure the ministry to act on some of these, we will have done something positive.

Mr. Sargent: I want to remind Mr. Gillies that all these terrible problems he is talking about did not happen in the last two years.

Mr. Gillies: I am not suggesting they did. Something has to be done.

Mr. Sargent: We have been living with these situations in Owen Sound since before I was born, and that is a long time.

Mr. Epp: An awful long time.

Mr. Sargent: But in line with my colleague Rick, I have been on the public accounts committee for about 10 or 15 years and I think we are lucky to have the finest auditor in Canada here. I congratulate him on the job he continues to do. I cannot complain about that, but I think the Attorney General (Mr. Scott) in 1985 was planning a program like this. Now it is in fruition and to tell the last speaker, I move we get on with the job and include an afterthought that Owen Sound should be included in this.

Mr. Chairman: Apparently everyone on the committee wants to have a comment on this. I have Mr. Wildman and then Mr. Gregory.

Mr. Wildman: I do not want to speak directly to this other than to say that there are very serious concerns raised and at least partially confirmed by the auditor in his findings. It might have been appropriate for the auditor in his assessment of the situation perhaps to have gone a little further than just to say whether something was correct, substantially correct or incorrect, but rather to say, as he has done on other occasions, where he found deficiencies, if these indeed were deficiencies. I do not have anything other than that to say. I would like to get to the point about being able to talk to the ministry people.

Mr. Gregory: I too join in congratulating the auditor. I have always found him to be totally upfront and with not a lot of flowery words. I wish Mr. McAuliffe was given the same talent; I find some of his remarks rather insulting.

Certainly in Peel and Brampton, Mississauga in particular, we have been saying for many years, whatever government was in power, that more courtroom facilities are needed, but I find it rather insulting when a comment is made, "The government is paying \$500,000 a year to lease space on Clarence Street which is owned by a company controlled by the Rice brothers (Louis and Max), two prominent Brampton Conservatives. This lease was renewed in 1981 for 12 more years."

Mr. Callahan of course objected to this, why it was renewed for 12 years; I guess that is because of a certain Jeff Rice, who is the son of Max Rice. All of this no doubt has come out in the election. I just wonder what prompted Mr. McAuliffe to raise this point. I mean, it certainly lends strength to the argument that we need more courtroom facilities.

They go on to the Hensall Circle jail and, unfortunately, Mr. McAuliffe could not find out who owned that one. I would like to take a guess. I think I know who owned it and he ain't a prominent Conservative, but that does not come out in Mr. McAuliffe's remarks.

It is refreshing to me to see remarks by the auditor that are certainly objective and not subjective as we see from Mr. McAuliffe and hear from Mr. Philip. I agree with the remarks of Mr. Ferraro, that Mr. Philip would only be satisfied with a report that he wrote--

Mr. Philip: I visited the --

Mr. Gregory: I have the floor, Mr. Philip. I did not interrupt you. He would only be satisfied with a report he wrote for Mr. Archer to sign.

I agree with what you have said, your comments. I wish you had gone a little further perhaps in recommending or in perhaps interviewing some of the people in the Peel courthouses, the judges perhaps and the lawyers, to assist

us in recommending and support our recommendations to the Attorney General. It is about time that the facilities in Peel, where we have two cities, Brampton and Mississauga, one with 350,000 people and the other with 200,000--if you do a comparison of courtroom facilities between Mississauga and Toronto per population, I think you will find we are very much wanting in Mississauga. I would really like to see some pressure.

I know it did not happen under your government, Herb. Do not get paranoid about it.

Mr. Epp: I was going to say that the auditor could not afford the \$200- or \$300-an-hour fees he would have had to pay lawyers in order to speak to them. He has to watch the taxpayers' money and that is why he probably did not speak to them.

Mr. Gregory: I could probably have got a couple of lawyers to donate their time for this cause because there is certainly the impression--

Mr. Philip: There are a lot of lawyers who did not get an opportunity.

Mr. Chairman: We have some witnesses before us. Are you finished, Mr. Gregory?

Mr. Wildman: On a point of order, Mr. Chairman: Does a lawyer pay people he talks to? I never heard of that before.

Mr. Chairman: Moving right along. Gentlemen, I wonder if you could--

Interjection.

Mr. Chairman: Order, please. Could you identify yourselves and your roles in the ministry for the purposes of the record?

Mr. Chaloner: My name is Richard Chaloner. I am the Deputy Attorney General. Glenn Carter is with me. He is the Assistant Deputy Attorney General, courts administration. If I might, I would like to make an opening statement.

I am pleased to appear before you, along with later my colleague Gérard Raymond from the Ministry of Government Services. We will outline the plans being developed by the Ministry of the Attorney General in response to the Provincial Auditor's Report on the Review of Courthouses in Ontario.

As you know, the ministries of the Attorney General and Government Services share the responsibility for providing courtroom facilities for all the courts in the province, regardless of whether the judges are federally or provincially appointed. They provide the court facilities for judges of the Supreme Court, the District Court, the provincial courts, criminal, family and civil divisions, as well as the unified family court in Hamilton. Courthouse facilities include not only the courtrooms themselves but also the space and staff for a wide variety of support services.

The Ministry of the Attorney General is specifically responsible for the overall management of the various court levels. We establish judicial districts and determine what facilities are required. At present, we provide courtroom space or services in 243 separate locations in 48 districts of the province. The Ministry of Government Services ensures that the necessary facilities are provided and properly maintained.

Physical problems identified by the Provincial Auditor have been compounded by the burgeoning volume of court work over the last generation and the increasing complexity of criminal and civil litigation. I might add that there is also a rapidly increasing population in many areas, for example, as we have just heard, Brampton. These developments have made the provision of courtroom and support service space the critical issue.

Within the Ministry of the Attorney General, we recognize this and are fully committed to improving the functional aspects of the administration of justice, such as the construction, maintenance and repair of our courthouse facilities. In the last few years, important steps have already been taken to provide improved facilities in many areas of the province.

In late 1985, the ministry reorganized its accommodation, management and other court-related functions by establishing the facilities and special court services branch. A new facilities section within the branch comprises accommodation officers from the ministry, as well as planning, architectural design and project management staff from the Ministry of Government Services. This new group combines the necessary skills and resources to co-ordinate the development and implementation of the ministry's accommodation projects and, very important, to strengthen the liaison between the two ministries.

But perhaps more important than the specific construction or renovation projects already under way, or our organization of the accommodation function, is the action by this ministry to establish a strategic plan based on consistent principles by which courtroom space could be provided and maintained over the next generation.

Three basic principles form the foundation of that strategy. First, the courtrooms will be utilized to the maximum extent possible. Therefore, a courtroom can no longer be designated permanently to any one particular division of the court system. Second, the Ministry of the Attorney General is responsible for the management and administration of the court system, and the assessment of need is a critical part of that responsibility. Third, and finally, facilities will be provided only in response to a proven need. These three guiding principles will assist the ministry in meeting its responsibility to manage and administer the court system more effectively.

1500

As part of our strategic plan, we are conducting a province-wide review of courthouse facilities on a judicial district basis. This process, which is being undertaken for the first time, will allow us to compare the needs of different regions. It will also help us to develop a project priorities list and ensure that resources are directed first to those districts most in need.

The review involves developing a profile of all judicial districts. The profile includes a consideration of the local economy, population, growth potential and existing facilities in each district. Completed profile reports are being distributed to members of the judiciary, the bar, police forces, municipalities and our own local staff for review and comment. This will provide the ministry with valuable input from the users of courthouse facilities across the province.

Profile reports for 20 districts have already been completed and distributed. It is expected that the remaining profiles will be completed and submitted to local users by early summer. Once comments from the various regions have been collected and evaluated, the Ministry of the Attorney

General will be in a position to build its project priority list.

It is important that our plans for allocation of available funding against demonstrated need be made in consultation with affected users and the local community. The allocation of limited resources will not be made on an ad hoc basis but must be part of a well-developed and consistent, long-term planning strategy. Our decisions will be a matter of public record.

To facilitate the comprehensive planning process, both the Ministry of Government Services and the Ministry of the Attorney General required more court-related information than was available from the Ministry of Government Services accommodation management information system. To respond to this need, the two ministries are working together to determine the additional data elements required and to develop a new computer-based data system. Information gathered will be utilized to develop long-term facility and project planning systems.

In conjunction with the profile reports, a task group within the Ministry of the Attorney General has been established to review the ministry's use of per diem court facilities across the province. These are the facilities I think you have heard mentioned in the report, where we do not occupy the building full-time. In a smaller community where we have the need of a court facility for only one or two days a week, we have to rent an existing facility. At present, you would find us in a town hall or perhaps a legion hall, a community centre or a facility of that type. Upon completion of this exercise, the ministry will have a better rationale for making decisions concerning per diem court operations, as opposed to being based solely on the norms of the past.

In addition to the development of a province-wide strategic plan and the collection of data and comments from the regions, the Ministry of the Attorney General has also commissioned the Ontario courts inquiry. Mr. Justice Zuber will review the jurisdiction, structure, organization, sittings, case scheduling and work load of all Ontario courts. The inquiry will make recommendations concerning the provision of a simpler, faster, more convenient and less costly court system.

The inquiry's report will likely have a significant impact on Ontario's court system. It could, for example, recommend the elimination of various court levels or the greater use of alternative forms of dispute resolution. Obviously, the adoption of such proposals would have an impact on the use of court facilities and might in fact alleviate certain stresses related to overcrowding.

The information contained in the inquiry's report, combined with data collected in the judicial profile reports, will allow this ministry to respond fairly and expeditiously to the legitimate concerns raised in the Provincial Auditor's report. Improving court facilities in times of economic restraint is not an easy task. By developing a strategic, long-term plan based on accurate and up-to-date information, I believe the Ministry of the Attorney General has risen to meet this challenge.

I will be pleased to answer any questions committee members may have. I would first request that Mr. Raymond join me, and I believe he has an opening statement also.

Mr. Chairman: Mr. Chaloner, in terms of the committee, would you feel awkward dealing with questions in response to your statement before we bring Mr. Raymond forward?

Mr. Chaloner: No, I would not; I could in response to my statement. Our only difficulty is that as we respond to sections of the report and to specific questions, we have a very clearly divided responsibility. While I can respond to some questions, I am not really in a position to respond to the others because they are not my responsibility.

Mr. Chairman: All right. I will ask Mr. Raymond to come forward, please.

Mr. Raymond: Thank you. My name is Gérard Raymond. I am the Deputy Minister of Government Services. I am accompanied by Tony Guy, who is the executive director of the property development division of the ministry. I too, along with my colleague, have a brief statement to make.

I appreciate the opportunity to comment on the auditor's report. I have read it, and I believe that those findings which fall within the area of responsibility of the Ministry of Government Services are fair. The auditor noted in his report that a number of corrective measures have already been taken by MGS and that other improvements have also been implemented.

It is important to recognize at the outset that many of the buildings which accommodate court facilities are very old; indeed, some of them are a century old. They were built according to codes which prevailed at the time of construction, and code requirements have been strengthened substantially over the years. The overall responsibility for meeting structural, fire and other building standards rests with the landlord. The landlords, in many cases, are smaller municipalities or counties. Often, they claim they are simply not in a position to fund expensive maintenance and repair items.

Nevertheless, when health and safety issues arise, we often make arrangements with the landlord to take care of the necessary improvements. In fact, in some cases, we do the work ourselves. With 617 courts in 243 buildings located in 175 municipalities across the province, the Ministry of the Attorney General and the Ministry of Government Services have had to set priorities within the annual funding allocation so that the most urgent matters are attended to first.

An increasing proportion of our spending has been dedicated to court facilities over the past several years. In fiscal 1975-76, the Ministry of Government Services spent \$5.5 million or seven per cent of its capital construction budget on the Ministry of the Attorney General's projects. Another \$649,000 was spent on alterations that year. In 1987-88, the Attorney General's share of capital funding will have grown to an estimated \$14.6 million or 27 per cent of MGS's capital allocation. In addition, in recent years, MGS has spent some \$3.8 million on retrofitting facilities in government buildings to ensure they are accessible to the physically disabled. We have allocated an additional \$860,000 for this important work in this current fiscal year.

The government has also provided new court facilities in buildings constructed over the past several years. In many cases, construction is the only truly cost-effective way of tackling the problem of these courthouses. New construction provides for more flexible operation and consolidation which cannot be achieved through the retrofitting of old facilities. New courthouses have been provided in Newmarket, Barrie, St. Catharines, Brantford and, most recently, Ottawa. In all cases, the new buildings replaced and consolidated several older facilities.

In Metropolitan Toronto, court operations were decentralized to the East Mall in Etobicoke and 1911 Eglinton Avenue East in Scarborough. Construction of an addition to the major court facility at 361 University Avenue was recently completed. New courts are under construction or in the tender process in Orangeville, Guelph, Hamilton and North Bay, and planning is under way in Brampton, Windsor, Cayuga and St. Thomas.

In addition, the Ministry of the Attorney General has identified a number of further projects for capital construction in its future accommodation plans, including a new courthouse to replace the facilities at the old city hall in downtown Toronto.

Staff of the Ministry of Government Services are working closely with the Attorney General's staff to address broader concerns which include many of the items noted in the auditor's report. As indicated by my colleague, we have issued an analysis of the condition and status of all court facilities in Ontario. We intend to expand this analysis to ensure we are aware of potential problems as they arise. We have also developed clearer guidelines and retraining programs for our property management staff so that they have a detailed knowledge of current fire safety requirements.

1510

In leased facilities, we have implemented improved procedures to ensure that lease renewals are accompanied by an exhaustive review of outstanding issues and problems, particularly as they relate to safety. We believe this will lead to a clearer understanding of the respective responsibilities of landlords and tenants for property improvements.

In closing, let me emphasize that we at the Ministry of Government Services are committed to developing and maintaining improved facilities. With a real property management portfolio of some 9,500 buildings, we acknowledge that improvements will always be required, but let me assure the members of the committee that we take our responsibility to meet our clients' needs and requests very seriously.

I and Mr. Guy and my other colleagues from MGS would also be pleased to answer your questions. Thank you.

Mr. Chairman: Do you have copies of that statement available?

Mr. Raymond: Yes, copies are available.

Mr. Chairman: I will ask the clerk to pick them up when he returns.

Mr. Gillies: I guess questions about jails and holding facilities that are alluded to would properly go to you, Mr. Raymond?

Mr. Raymond: Yes. They should really be directed to my colleague in the Ministry of Correctional Services, but I will indeed attempt to answer your questions, Mr. Gillies.

Mr. Gillies: Thank you. You may have heard my comments earlier. There are a number of things in this report that I find very upsetting. While I appreciate that you have studies under way and building plans, when I read about the jail cells at L'Orignal, I find it hard to believe we are talking about Canada in 1987.

My question to you gentlemen is, how much longer in this province are we going to be incarcerating people in cells that measure three feet by eight feet, with a bucket? I would like to know what plans are under way to correct that. I have some other questions arising out of this particular matter.

Mr. Raymond: By way of a general response, the Ministry of Correctional Services, like my colleagues in the Ministry of the Attorney General, would be part of an annual exercise whereby priorities for the year or the five-year plan are identified and submitted to Management Board for approval. It is up to the client ministry to ascertain and determine what priorities will come at the top of the list.

It is a question I wish I could answer in greater detail, Mr. Gillies, but it would be up to the people in the Ministry of Correctional Services to determine where it fits on the priority list.

Mr. Gillies: I certainly accept your answer. I am wondering whether we might ask somebody from Correctional Services to come before the committee during the course of this discussion.

Mr. Raymond: If I may, not to interject or interrupt, Mr. Gillies, as far as L'Orignal is concerned, one must remember it is the oldest building, as I understand it, that is a subject of this report. One must keep in mind that those walls are bearing walls. They are solid concrete walls and they are not easily removed. We are at present having ongoing negotiations with the town of L'Orignal with a view to renewing the leases, and that has been done to the best of my knowledge, but the long-term solution will have to await the outcome of Mr. Chaloner's review.

Mr. Sargent: Are they bearing walls for each cell?

Mr. Guy: It is a bolted construction of brick--you may remember the old bolted arches--and it is impossible to enlarge the cells. I understand an interim arrangement is being proposed. It is not yet implemented. As the deputy minister says, it is the subject of priority funding. It will at least permit the inmates access to toilet facilities centrally by the use of opening doors and other security arrangements. I stress that would be an interim arrangement. Probably the only realistic solution, which again, the deputy alluded to, is to replace at least the holding cell part of the facility with more appropriate accommodation.

Mr. Gillies: I take several things from your answers. First, if you are renewing the lease at this facility, then clearly this jail is not at the top of the priority list of your client ministry, the Ministry of Correctional Services, in terms of new construction. That being the case, I would have to assume that some of their higher priorities have similar, if not worse, conditions.

I do not expect you to be able to answer this right now, but if you could provide them to the committee or ask the Ministry of Correctional Services to provide them to the committee, I would like to know what the standards are now. I would like to know all the standards and regulations for the size of cells and facilities available to prisoners or inmates if you were building a new facility. I would also like to know how many facilities across the province are of the type we see described here in L'Orignal. How many people across the province are being incarcerated under those conditions? Are we talking about hundreds or thousands?

Mr. Raymond: If I may respond to the first part of Mr. Gillies's question or comment on existing leases, they expired on December 31, 1986. It is obvious that even if Correctional Services were to get approval to go to construction today, it would be a major undertaking. Therefore, there was no other choice but to renew some of those leases, which we have done. We have renewed the lease for a five-year term, but we have included in the new lease a cancellation clause after the second year, so that would not stand in the way of the ministry obtaining approval to proceed with a new facility.

On the technical requirements, I do not have the technical information with me. If we do not have it today, we or our colleagues in Correctional Services will gladly make that available to you, sir.

Mr. Gillies: Thank you. I would like to see that. I can well appreciate the squeeze and the money problems you must run up against, but when I see the expansion to our jail in Brantford, for example, I am glad we got it, because there was an overcrowding problem. I have been through that jail a number of times and certainly the individual cell sizes and facilities available to the inmates in Brantford are better than those described here.

Do I assume that you and your client ministry have to base a lot of your priorities on the sheer numbers of prisoners and sometimes that has to take precedence over the individual conditions in which prisoners are kept, regardless of how bad they are?

Mr. Raymond: A single consideration would not determine the final disposal of a project. There are a number of factors that enter into the picture--age, conditions, population, growing population, exploding population, as Dick has suggested. There is no single answer to your question.

Mr. Gillies: Perhaps I should direct my next question to Mr. Chaloner. Obviously, if a prisoner were being incarcerated for a lengthy period, he would not be in this kind of facility. He would be moved into a proper correctional centre. Could you give us an idea of the length of sentences for which people may find themselves in this type of facility?

Mr. Chaloner: Again, you would really have to go to Correctional Services, but I can speak from my own experience and understanding of the situation.

In the report, you actually have two types of facilities mentioned. This is the only one I am aware of in the report that is what we would call a regional jail. At one time, it was a county jail, again, like Brantford. The other type is the holding cell of the type that was mentioned in Brampton, Hamilton and other areas. A person is brought in and held there on the day of the court appearance. As soon as he is out of court, he is moved back to the regional holding facility.

1520

The L'Original jail being an old jail, my understanding is that the prisoners are there for only a few days generally. Once they have been sentenced, they would be sent to the regional detention facility, which I think is in Ottawa, is it?

Mr. Carter: One in Ottawa, one in Rideau.

Mr. Chaloner: Although it is a Ministry of Correctional Services

facility as opposed to our holding cells in a courthouse, it actually is a short-term facility, because of its age and condition.

Mr. Gillies: The conditions described for the various holding cells--I am looking at Brampton now--are serious enough, but I understand what you are saying. Those are areas where people would be held during the day, pending their trial or hearing being held. They are not facilities where people are held days at a time.

Mr. Chaloner: Just a matter of hours.

Mr. Gillies: I will come back with some other questions but, on this subject, I urge you gentlemen and your colleagues in Correctional Services, as these facts become known to the public, I do not think society will any longer condone people being held, even for a matter of days, in a cell of three feet by eight feet. I personally was very upset when I read it. While I appreciate the constraints you are up against, I just do not think society will tolerate that, and I urge you, on an urgent basis, to look at your facilities around the province, see how many are holding people in conditions like those and afford them the very highest priority.

Quite frankly, I do not know how popular it is, in this day and age, to call for improved jail facilities. People read something about all the prisoners getting coloured TVs in Texas and get very upset, but that is not what we are talking about here. I really think those conditions are inhumane.

Mr. Sargent: The answer to that is to build your jails so you may use them yourself. That is not pointed at you but is an old terminology in penal reform, that you should build your jails so you may use them yourselves.

Mr. Wildman: I would like to turn to the same topic Mr. Gillies was dealing with. It is referred to on page 37 of the review by the auditor. Could you tell me how long the jail at L'Orignal has been on the priority list for upgrading?

Mr. Raymond: I am sorry. If the question is directed to me, I do not have that answer.

Mr. Wildman: I guess Correctional Services would?

Mr. Raymond: Yes.

Mr. Wildman: This jail was built in 1825, it says.

Mr. Raymond: As I understand it, the original building was built in the 1820s, yes.

Mr. Wildman: Then there were some additions in 1871 and 1962?

Mr. Raymond: Correct.

Mr. Wildman: Would it be fair to say that the conditions described, cells three feet wide and eight feet long for overnight lockup, with a bucket, have been the case for at least 20-odd years, if not longer?

Mr. Raymond: It would be unfair for me to attempt to answer that question on behalf of my colleagues at the Ministry of Correctional Services. I do not know how long that situation has prevailed.

Mr. Wildman: You just said to us that the building is of a certain type of construction, that it is very difficult to change the walls.

Mr. Raymond: Correct.

Mr. Wildman: The last renovation or addition that is described was in the early 1960s, so I do not think it is speculation to suggest these conditions have been the same for at least 20 years.

Mr. Raymond: That may well be the case. The 1962 addition, which was built by the united counties of Prescottt and Russell was intended to house the court administration offices, the judges' offices, the crown attorney's offices, and the county offices. The jail component of the facility was not included.

Mr. Wildman: All that tells me, Mr. Raymond, is that the situation that is described with regard to the cells has been longer than 20 years.

Mr. Raymond: It could be.

Mr. Wildman: How can you say could be? You just told me you could not change the walls.

Mr. Raymond: I do not know how long that situation has prevailed. I would have to ask my colleagues in the Ministry of Correctional Services.

Mr. Wildman: Okay. Obviously, we have to talk to them. The point I am making is that whatever the outrage in 1987, there was an outrage in 1962, and if it cannot be justified in 1987, our views of humanitarian treatment have not changed greatly in the last 20 years. The suggestion is that suddenly we should be changing it in 1987 because these conditions are unacceptable; they were unacceptable 20 years ago. Obviously, we have set priorities many times since then. I am certainly going to be interested in the explanation from the ministry as to how it sets its priorities. It scares me that if this is not a top priority, then perhaps in the last 20 years we have had conditions even worse in other facilities.

I would also like to turn to the Woodstock-Oxford county courthouse on page 33 This is a 90-year-old building; it was built in 1892. The auditor has made his comments here. Could you outline for us the changes that are being made to improve the problems identified with regard to lockup facilities, washrooms for juries and the overcrowding?

Mr. Raymond: Mr. Chaloner, you may want to respond to this question as well. The general situation as far as Oxford county is concerned is that they are in a leased building. The Attorney General people and ourselves have had ongoing discussions with the county authorities. We have met with them as recently as a few weeks ago.

We are accommodating the same building as the Oxford county council, and there would appear to be insufficient space for both groups to remain in the building. The suggestion has been made that we should acquire the building. I can tell you that in consultation with the Ministry of the Attorney General, we are now in the process of doing an appraisal on that facility.

Some interim steps have been taken, and Tony Guy can be a little more specific as to what has been done, but the major replicate project that would be required should follow the decision as to whether we will indeed acquire

the building or look to some other option, such as capital construction on some other site. In going to the board, both the client and we ourselves would have to make a business case and justify the most advantageous option from a financial perspective. Interim steps have indeed been taken, and Tony may want to speak to some of them.

The Vice-Chairman: Just before he does, could you comment on the general problem of retrofitting or improving leased accommodation? Would it be fair to speculate that if it is a municipality, for instance, from which you are leasing, the municipality would be rather cautious about spending money on a facility unless it had some kind of commitment that that lease would be at least a long-term lease? Is that fair?

Mr. Raymond: That is a very fair observation.

1530

Mr. Wildman: Okay. I have a particular case in my riding, in Thessalon, where the municipality was asked to retrofit a particular facility to use as a courthouse with regard to improvements to the facility. It made those improvements, and two years later, it has been informed that the facility is no longer needed. I have some sympathy with the municipality in that kind of situation.

Rather than comment directly on that one, can you give us some detail as to what you are doing with regard to the Woodstock-Oxford county situation?

Mr. Guy: Basically, to answer your question specifically on Woodstock and St. Thomas, we are immediately correcting what we consider to be urgent matters concerning fire safety. That is being done. The work is being undertaken and will be completed in the summer of this year ready for the fall court session.

Mr. Wildman: Does that include the improvements to the electrical system?

Mr. Guy: No, it does not. It is simply the health and safety issues that we think have to be fixed immediately.

You are absolutely correct in your assertion that it is difficult to deal with local municipalities, or other landlords for that matter, to make other improvements at considerable cost to either them or the government unless there is some resolution of the long-term future of the building.

We have been struggling--and I use the word advisedly--with the relative economics of what is a good and reasonable investment to make and over what period. Is it prudent to invest many dollars in what may be a short-duration plan? With our colleagues in the Attorney General's ministry, we are attempting to come to grips with it in terms of coming up with a long-term plan so that long-term solutions can be implemented.

However, that is not to negate the fact that, in our opinion, work has to be done where health and safety issues are at stake. We have tried to separate those. In those three specific instances that were identified in this report, and in others that are not identified, we are taking action to do that work.

Mr. Wildman: On the question of long-term leases, perhaps the Deputy

Attorney General can comment. What commitment is the ministry prepared to make in a general sense that if it is going to retrofit a leased accommodation, it is not going to say two or three years later, on the basis of the number of cases involved, "Sorry, we do not need this facility any more"?

Mr. Chaloner: I do not like to sidestep constantly, but really that is within the leasing branch of the Ministry of Government Services.

Mr. Wildman: Yes, but it is your ministry that determines whether you need the facility on the basis of the number of cases.

Mr. Chaloner: That is right. In a facility such as Woodstock, if we decide it is to be retrofitted substantially and made over into a modern courthouse in the sense of its facilities if not its appearance, we would expect to put ourselves in a very long-term lease.

Mr. Wildman: I do not think that really answers my question as to whether you are still going to reserve the option to say at some future date, "In a particular location, the number of cases no longer warrants the use of this facility and so we are not going to renew the lease."

Could you turn also to Tillsonburg. On page 29, it says the lawyers were using the janitor's utility table and the clients were using the freezer as a desk. This has now changed to the point where the judge has a small room and apparently there has been a round table provided. These are obviously makeshift arrangements. What is being done to try to improve the situation on a long-term basis?

Mr. Chaloner: Maybe I could address myself to the type of situation we have in Tillsonburg, because I spent about 20 years actually operating courts like that. It is a fact of life, I think, in a province such as Ontario that we have a choice. We can either build a first-rate facility, as we have in a number of areas--the latest one being Ottawa--and bring everybody in to it; or with our lower level of provincial courts, criminal, civil and family, we can go out to the local community.

There was a time in the early development of the country when you literally held court in an apple orchard. When we go out once a week or sometimes once or twice a month to a local community, we do not say to the local county council, the town council, the fire department or whoever happens to own the building, "You have to make a courthouse for us." We have to make do, because there is a tradeoff between having a slick court facility and having a facility that is in the local community.

People are concerned that if you hold court in a legion hall, and there happens to be a juke-box in the corner, that somehow the administration of justice is brought into disrepute. I can recall about 20 years ago going up to the Waubaushe court. It is upstairs, over the legion. The magistrate, as he then was, held court in front of a juke-box.

Mr. Wildman: Did you play "Jailhouse Rock?"

Mr. Chaloner: No, it was not on.

We interviewed the police; we would do our interviews in the kitchen. There is a little room off the side where the magistrate would retire. The administration of justice in that courtroom was not brought into disrepute, because it was the man who was on the bench who represented justice for that community.

Mr. Wildman: No one is debating that. I am not concerned whether there is a juke-box in the corner, but I really think it might be nice to provide the person with a table or a desk rather than a freezer.

Mr. Chaloner: Apparently, we have done that in this area, but in some of these facilities there is literally nowhere to put a table or a desk, and the freezers work quite well. I have used them. It is just that you have to make a tradeoff in those situations.

Mr. Wildman: Justice on ice, as opposed to sole on ice.

Mr. Epp: Here, we are talking about court facilities that are not used on a daily basis.

Mr. Chaloner: That is right.

Mr. Epp: I think what happens is, there is a perception out there that these are facilities which may be used five days a week for five, six, seven or eight hours a day, and you are talking about court facilities which may be used only three or four hours a month or maybe two or three hours a week.

Mr. Chaloner: That is right.

Mr. Wildman: Okay. In that case, let us turn to one that is not used on that basis. Let us look at Hamilton. On page 24, it refers to the question of a judge being assaulted. As I understand it, this is not a building that is used only two or three days every month or week. Were changes made to try to avoid this happening? Were they in the works before it happened? Was it just after it happened or, even worse, after this report came out that the necessary renovations were put on the priority list? Where are they on the priority list?

Mr. Raymond: In answer to Mr. Epp's earlier question, to the best of my knowledge, the Tillsonburg facility is used at a rate of about 50 days a year.

As far as the security aspect of this is concerned, we have already made changes ourselves, such as installing a second door and Plexiglas on the prisoner docks of courtrooms 6 and 7. Through the lease negotiations, which are now taking place, we will bring about additional changes to the area at this courthouse, which I understand is located at 140 Hunter Street.

1540

Mr. Wildman: Were those renovations initiated after this incident but prior to the discussions on the radio?

Mr. Raymond: Tony Guy can tell you about the timing of the renovations, but the incident that is alluded to precedes me in the Ministry of Government Services. I have been in MGS for only about 15 or 16 months now, but I remember reading about this incident well before I joined MGS.

The changes that have been made would not have been done immediately after the incident. As to whether they were done just prior to the Provincial Auditor released his report, I think the work was undertaken some time ago. Tony can respond in more specific terms.

Mr. Guy: With respect to the issue of 125 Main Street and the renewal of that lease, the lease is currently in negotiation. It is normal for us to introduce substantive changes in leased premises at the time of renewal. I have forgotten the name of the committee member who raised it, but we have a lot of leverage with the leasing community. Through our experience, we have found that the most prudent time to exercise that leverage with the landlord, whether it be a municipality or a private sector landlord, is at the time the renewal is being negotiated.

The lease for 125 Main Street expired in January 1987. We have a program of improvements that has been arranged with the Attorney General, and we are currently attempting to finalize those negotiations with the landlord so that he may undertake some of the work and we may undertake some of the work.

Mr. Wildman: When did the incident that is referred to occur?

Mr. Guy: I honestly do not know.

Mr. Wildman: Was it a year, two years or three years ago?

Mr. Guy: I honestly do not know.

Mr. Wildman: I think that is germane to this committee's work in trying to find out what kind of priority the government gives to trying to rectify these problems. Let us put it this way: Was it within the period of the one lease--that is, you did it the next time the lease came up for renewal--or was there a renewal in between times?

Mr. Raymond: We will have to get back to you with the information as to the exact timing.

Mr. Wildman: All right. My final question deals with page 13. Without in any way meaning to sound alarmist or whatever, I was a little bit concerned about the reaction of some members of our committee with regard to this question of rape victims perhaps having to share a room with the alleged assailant, even if there were a police guard present. Can the Deputy Attorney General tell me whether he considers that situation, with no lockup and the use of one waiting room not only in rape cases but also in other cases, acceptable and how long it has existed?

Mr. Chaloner: My first answer to your last question is that it is not considered acceptable, and as far as I am concerned, it does not depend upon the availability of a room outside the courtroom.

I do not want to bore you with my own experience, but in Guelph we had an excellent courthouse. We had excellent facilities. We could easily have had a separate room for rape victims. Usually, when we were conducting what is known as a sexual assault trial, the victim would be taken down into my own office and kept there throughout the trial, so she did not have to mix with anybody. A lot of it is just the awareness of the local staff to the problem.

Mr. Wildman: I agree with that.

Mr. Chaloner: I have been in St. Thomas; I have seen the facility. Right down the hall was a little room, a small part of the library, that could have been opened up and used. Obviously, there is a crown attorney's office and a sheriff's office in that building; there are a dozen places. It has been made clear to the staff members at St. Thomas that they are not to let that happen again.

Mr. Wildman: I appreciate that. Basically, you are saying that previously the staff, and I suppose even the crown attorney involved, was not sensitive.

Mr. Chaloner: I would suspect they were not aware. Probably the crown attorney was leaving it to the police, and the police were not being as sensitive as they should to that issue. I think that is right. We have now made it very clear that they are not to do that. We now have an extensive program of making all our staff aware of the special needs of victims of this type. Also, my understanding of St. Thomas is that it was a fairly isolated incident that was referred to.

Mr. Wildman: I am concerned about the question of sexual assault cases. Obviously, they are the particular ones where sensitivity on the part of the police and the staff is needed. But surely it does not make a lot of sense in a lot of other types of cases too. For instance, if you are dealing with another type of assault charge and bring a victim in close proximity to the accused assailant, you might run into some problems.

Mr. Challoner: I quite agree with you. The facility at St. Thomas is not good in the sense that there are not a lot of separate areas to keep people in; it is a function of the design of the building. Until we get a new building or redesign the old one, there is not a whole lot we can do about it, but we can certainly avoid the worst examples. One of the things we have instructed the sheriff to do is to keep the accused in a private area when he is in custody.

Mr. Wildman: Finally, the other comment I have is really directed to Mr. Archer and his staff, with regard to the question of the handicapped access on page 13. I recognize that it is an old building and that there are no elevators; but from your work and assessment of the situation, just in relation to things like fire safety, do you think it is adequate to have people having to be carried in and out, for instance, if they are restricted to a wheelchair?

Mr. Archer: I do not think that is adequate. We should be striving for better conditions than that.

Mr. Wildman: Okay. What is being done?

Mr. Raymond: As I indicated in my opening statement, we have expended close to \$4 million in recent years. In this current fiscal year, we have budgeted \$860,000. We have conducted a province-wide survey. The emphasis to date has been placed--and you will understand why--on government-owned buildings. Our survey on the accessibility of government-owned or leased buildings was done over the last few months--in 1986, as a matter of fact.

We have placed the emphasis on office and judicial buildings so that the members of the public who have a greater need to can have access to those facilities. To correct those buildings alone would cost us this year some \$7.2 million. We are looking at possibly \$10 million in total to correct all of these government-owned facilities. We are doing it in a gradual way.

When we come to leases, it is more difficult. You will appreciate--and I am repeating what Mr. Guy said earlier--that while there is a desire on the part of the municipalities to see us enter into long-term leases, we too have an interest in doing so, because whatever alterations are required are usually reflected in the rents we pay. So before we commit public funds, we usually

like to have a commitment to a long-term lease on the part of the municipality.

As the Provincial Auditor has indicated, we too do not support the absence of facilities for disabled clients, inmates or witnesses. We are doing it in a very gradual way, and I think we can take some pride in what has been accomplished so far.

Mr. Philip: I want to ask you about the Zuber report. You talk about five-year plans, the Zuber report and a survey. Can you distinguish among them? I am not clear. Sometimes I think you are talking about one and sometimes I think you are talking about the other.

Is it fair to say that neither the survey, the five-year plan nor the Zuber report that was commissioned happened until after Mr. McAuliffe did his award-winning series of broadcasts, after the judges managed to go public with a lot of their concerns and indeed after questions were raised following Mr. McAuliffe's report and some reports in the newspapers? Suddenly all those three things started taking place. Is that a fair assessment?

Mr. Chaloner: No. The Zuber report had nothing to do with this. I was not the deputy minister when Zuber was first considered. Zuber would have been first considered in September 1985; that would be quite a bit before Mr. McAuliffe. I am not sure when the order in council went down, but I know our minister and the ministry officials were talking about it as early as September 1985.

1550

Mr. Philip: The Zuber appointment was announced by the present government, not the former government, so it could not have happened in 1985. It would have been certainly after the election.

Mr. Chaloner: Maybe my math is out. I think the government came in in June 1985.

Mr. Philip: Yes, but it was a lot later that this was announced.

Mr. Chaloner: June 26, 1985, so I think it would be about the following September. I know that is well ahead of Zuber.

As for the idea of doing a total province-wide survey, I would have to consult as to the exact date. Again, I know it is something we were considering, talking about and expressing concern about fairly early on. There has always been the idea of a long-term plan. It is just that we are now taking a more overall approach to a long-term plan in the sense of surveying all the facilities in the entire province.

Mr. Philip: Zuber is quoted in one paper, not directly but as a quote attributed to the government, as bringing down his report in April of this year. Is that on target?

Mr. Chaloner: No. I think we expect it in July of this year.

Mr. Philip: It is forestalled until July?

Mr. Chaloner: Yes. I did not know that April was ever considered a target date. I have always considered it to be July.

Mr. Philip: April was mentioned in one of the press clippings. It was attributed as likely to be released in April.

Mr. Chaloner: No. My understanding is July.

Mr. Philip: So the process is that Mr. Justice Zuber's report becomes a public report then, or it goes to the minister and then the minister releases it at his pleasure?

Mr. Chaloner: That would be up to the minister, as I understand it.

Mr. Philip: I will direct this towards the Ministry of Government Services rather than the Ministry of the Attorney General, because I think it is perhaps more directly under its jurisdiction.

We talked earlier about how it was often more cost-efficient to build new courthouse facilities than to repair some of the older ones. That may well be the case, but can you tell me how you can build a \$15-million courthouse in Ottawa without building public parking facilities into that? How does that happen?

Mr. Raymond: Mr. Guy was directly associated with the project from the outset, but let me tell you as much as I know about the history of this project.

At the time it was constructed, the original intention was to comply with the local parking bylaw. I think there was therefore a commitment to provide 127 parking spaces over and above what is available in the underground parking facility. When we went out with a proposal call to lease those spaces, the response was not favourable, and at the very same time, two large parking facilities were being decommissioned in the same area. I think one of them was the National Arts Centre and the other was the Bell Canada tower. Both are now back in operation.

As the auditor pointed out in his report, there are available in the immediate area a number of other parking facilities. I think they total some 3,000 parking facilities all told. Nevertheless, back in November we initiated discussions, both with Management Board of Cabinet and with the regional municipality of Ottawa-Carleton, when we became aware of the fact that they were proposing to erect a new complex for the regional municipality.

We have an agreement in principle, with the approval of the board, as indicated in the auditor's report, to enter into an agreement with the regional municipality whereby some 500 places will be provided with the proviso that they be made available to the members of the public on a daily basis, not a weekly or monthly basis. That agreement in principle has been arrived at with the regional municipality of Ottawa.

Before it can be fully implemented, an amendment to the Regional Municipality of Ottawa-Carleton Act will be required. Members of this committee will know that amendment was tabled during the course of the last session. It died on the order paper, but I understand from our colleagues in Municipal Affairs that the amendment should be reintroduced in the course of the upcoming session, and that will clear the way for the signing of the agreement between the regional municipality of Ottawa-Carleton and the Ministry of Government Services.

Mr. Philip: Can you tell me how and who was responsible for the fiasco of the new courthouse in St. Catharines?

Mr. Raymond: First, this is a \$50-million facility. It is not an ordinary, simple office building. Courthouse facilities are somewhat sophisticated.

I do not know what you mean by the fiasco in St. Catharines. In our response to the Provincial Auditor, we indicated that some post-occupancy corrective measures were called for, and they were taken. The two most costly items, and I think they totalled \$83,000 and \$175,000 or 178,000, had to do with the systems that were installed at the time of construction.

My colleagues in the Ministry of Government Services who were involved in this at the time inform me that they were quite conscious of the fact that in those days a great deal of emphasis was being placed on energy conservation. We were testing a new technology. The ministry wanted to test its new technology for two basic, fundamental reasons: first, for its future use of that technology, and second, to assist the private sector, because we were aware that if it proved successful, it could be used elsewhere.

We have monitored the situation in St. Catharines, and our claim is that we are saving roughly \$37,000 a year as a result of the modifications that were made--post-occupancy, we recognize. The contractor delivered the building according to the specifications of the contract. We were aware that some corrective measures would probably be called for, and we had no hesitation in undertaking those changes. Over the life of the system, we think that \$37,000 a year could amount to as much as \$3 million.

The lesson we have learned in St. Catharines has served us well. We used a similar approach in Ottawa--with some modifications, not to repeat St. Catharines--and we think the savings that will accrue to the province over the long haul are indeed very considerable.

I do not want to bore the members of the committee with some of the statistical information, and it gets very technical, but the energy performance index in St. Catharines is 9.77. I could go on to explain the formula; this is expressed in equivalent kilowatt-hours per square foot per year. But that aside, compared to the 30.69 for the addition built in 1978 in Milton or 22.93 in the regional office and the jail in Barrie, which was built in 1976, and it was a demonstration case, a pilot project, we think we got value for money out of the additional expenditures that accrued to the province post-occupancy.

Mr. Philip: You can show practically any new building and compare it to an older building, and after the fuel scare, I guarantee you probably have increases in energy efficiency like that.

I am told by contractors and real estate people in St. Catharines that there was not one local contractor who would touch that project. Is that true?

Mr. Raymond: I was not around at the time the contract was awarded, but I presume the normal practice of awarding the contractor to the lowest bidder was followed. It was built by Acme, a Sudbury firm, if I am not mistaken. Whether there were local contractors that bid or refused to do so, I am not aware.

1600

Mr. Philip: Would it not tip you off that there might be something wrong in the basic contract or the design if you find that the local

contractors, who are highly efficient contractors--I assume as efficient and capable as the ones in Sudbury, Toronto or any other area--did not want to touch it?

Mr. Guy: That would not mean that to me. What would be of significance to me--and I honestly do not have statistics--would be if there were only one or two bids. I do not believe such was the case in St. Catharines. I think it was bid by the biggest and the most able contractors in this province, of which there are many. As the deputy says, it was a very competitive process. The public tender process does require, unless we have very good reason, to take a low bid.

My experience suggests it would not be the technical competence of the building that would be a reason for a local contractor not to bid, because I think there are equally competent and technically competent contractors elsewhere. Area of residence would probably have little to do with competence of bid.

Mr. Philip: Would it surprise you if the word on the street, so to speak, in St. Catharines is that the reason they did not want to bid is they did not think the proposal was practical and that it might end up in a series of rejects and lawsuits against the builder for not fulfilling--

Mr. Guy: My experience with the contracting industry in dealing with governments would suggest that many of them may bid for that reason, to be honest.

Mr. Philip: What? So they could be sued because they could not fulfil the contract?

Mr. Guy: No. Simply because in litigation and difficulty with the government, it is the government that is usually in a more difficult position. That appears to be the word on the street.

Mr. Philip: I think the Ombudsman, who has dealt with contractors who feel they have not been paid by the government, might have a different opinion on that.

How can you build a new facility in which, when there is a loading truck in that facility, you cannot get cars out of the underground garage? I have been there. I know I would not drive my car down there because I could not get it around without going out the in ramp to get around a truck. You do not have to be an architect to figure that one out, you just have to have common sense. That is a major fault in design.

Mr. Raymond: I do not know whether it was a major fault in design. It was a minor undertaking to correct the fault, and that has now been corrected. I understand there is an island--you have the advantage of having seen it; I have not seen the underground garage in that facility--and the fault has now been corrected. It was matter of moving the arm that comes down by a few feet. A curved piece of concrete against a wall was removed, and that made the entranceway wider. I understand that was done and the situation has been corrected.

Mr. Philip: In the middle of that island was a huge concrete post that officials told us was a structural post holding up part of the building. Are you telling me you removed that?

Mr. Raymond: I do not know what structural changes were made to the post. Mr. Hard, would you know?

Mr. Hard: There was a column and the column was not removed.

Mr. Philip: So you can get out now when there is a loading truck, without going up the in ramp and hope that nobody zooms in to bang your head on.

Mr. Raymond: Do you mean a loading truck coming down the ramp?

Mr. Philip: No, a loading truck loading in the loading zone.

Mr. Raymond: If you mean the van the police use, I think there was confusion at the outset over this issue. There is a separate sally-port where the police vans take the inmates. It was never intended that the police would use the general entranceway to gain access to the garage. I am told there is no problem whatsoever with the van going down to the sally-port area and discharging the inmates or the accuseds.

Mr. Philip: As I recall it from being there, there is an unloading zone for prisoners.

Mr. Raymond: That is right.

Mr. Philip: That is a security zone.

Mr. Raymond: Correct.

Mr. Philip: In which the paddy-wagon--and I use the old terminology that I am used to from the movies--drives in, the garage door shuts and is locked automatically by the guard or whatever.

Mr. Raymond: Correct. That is the normal practice.

Mr. Philip: Then you are in there and you cannot get out, except up a stairway that leads to the cells. If I am facing the building, right next to it a few feet on my right is the loading zone for materials, paper, statutes or whatever they bring into courthouses--chairs and furniture. Right beside that is the entrance and exit for the underground garage.

The accusation made by police officers to whom we talked was that if there was a truck loading, they could not get into or out of the security loading zone, and furthermore that cars could not get out the out ramp without going up the in ramp in order to get out of the underground garage. Now you are telling me those three problems have been corrected.

Mr. Raymond: You have introduced a new consideration that I was not aware of, about the loading ramp blocking the way to cars that want to gain access to the general parking area. With your permission, Mr. Chairman, if you want to get involved in a technical discussion, Bill Hart from the Ministry of Government Services is seconded to the Ministry of the Attorney General, and he could provide you with some of the technical--

Mr. Philip: Does he have a blueprint on which he can just show it to us? Maybe we can do that afterwards. That was a problem they pointed out to us. Can you assure us that it has been corrected?

Mr. Guy: It is our understanding that all those issues are taken care of. I think it may be very good that we should look at a blueprint and review it in some detail. As I understand it, part of the problem was that vehicles improperly positioned themselves for loading or unloading or parked illegally and that action had to be taken by the building management staff to ensure that does not happen. In fact, there is monitoring of the access and egress systems when shorter vehicles do not block it. I think that was a problem and the remedy, in part, that I was aware of was to ensure that vehicles do not park improperly. That was part of the solution.

Mr. Raymond: The irony of the situation is that some of the illegally parked cars were police cars.

Mr. Philip: The only place you would have room to illegally park police cars would be on the street.

Mr. Raymond: It is just that in my briefing notes, I have--

Mr. Philip: At least I could not park my car, and a police car is about the same size.

Mr. Raymond: As for the two problems that were described in the earlier reports, it is clearly my understanding that corrective measures that have been taken have corrected those two situations. We would gladly look into this new consideration you have introduced today.

Mr. Philip: Are there fire sprinkler systems now in the holding cells?

Mr. Raymond: In St. Catharines?

Mr. Philip: Yes.

Mr. Raymond: I know there is an evacuation plan that is in place. To the best of my knowledge, all the safety measures that were required in that building are indeed in place, unless I am corrected by Mr. Hard.

Mr. Hard: I do not think there were sprinklers in the holding cells. In general it is not a sprinklered area. Did you say within the cells themselves?

Mr. Philip: Yes.

Mr. Chairman: I am not going to let this continue. If you want this gentleman to respond, you can have him come forward.

Mr. Raymond: If that is your desire, Mr. Chairman--

Mr. Chairman: No. Mr. Philip has--

Mr. Philip: I got my answer. The answer is that there are no sprinkler systems in the holding cells. When I was there, I asked a police officer--

Mr. Chaloner: Excuse me. Just before you leave that, again I am only guessing, but I think the reason is that prisoners set off sprinklers in holding cells. So you have to have them in an area outside but you have to depend on fire control through some other method.

Mr. Philip: I guess you can have holding cells in a no-smoking area then.

Mr. Chaloner: It is pretty easy to set a sprinkler off if you know how.

Mr. Raymond: To the best of my knowledge, we have never been asked by the fire marshal, or it has never been reported in any of the panel reports we received on this facility, that sprinklers were required within the holding cells area.

Mr. Philip: Would it surprise you if I told you when I asked a guard, "How do you get the prisoners out if there is a fire?" he said, "I would load them all on to the elevator and I would go down with them"? When I persisted, he said, "No, we have to tell them to go down the stairs and report to the nearest police station."

I did not make that up. I see some of your staff shaking their heads. Mr. McAuliffe was with me when I asked that question and I can verify that, in fact, was the answer. Needless to say, the sheriff who was with us--and he was most cordial and co-operative, I must say--turned a little red. I think it was not the answer he wanted me to hear. I could not make up these horror stories. That is actually the response we were given.

1610

Mr. Chaloner: Again, maybe I could answer that. It seems to me that there would be a situation in any lockup facility where you would have to open the door and let the prisoners go, and that is where the fire is in the immediate area and there is only one guard there, for some reason or other; you obviously cannot leave the people locked up if there is a fire in that area, whereas if there is a proper number of guards and the fire is in another area, you can properly contain your prisoners and move them to another secure van or outside under guard.

Was it a police officer who said that to you?

Mr. Philip: I got one of the answers, concerning the ramp and so forth, from OPP officers.

Mr. Chaloner: No, I mean about letting people go.

Mr. Philip: It was a fellow in uniform; I cannot remember whether it was an OPP officer or a security guard.

Mr. Chaloner: I suspect he was having some fun, but in any event--

Mr. Philip: I doubt it, with the sheriff there. I do not think the sheriff looks like a guy whose leg you would want to pull in front of a radio commentator.

Mr. Chaloner: We subsequently checked with the police sergeant and he assured us there is a proper procedure to take prisoners out. I think it depends on where the fire would be located.

Mr. Philip: Maybe the procedure was developed after we made our visit.

Mr. Raymond: It would take time. The covering letter on this is dated June 16. I do not know whether that was after or before we last appeared before this committee.

If you want me to, I can read information into the record for you as to the evacuation plan that is in place. Maybe I should just refer to not the duties of the court sergeant but the duties of the cell officer in charge.

"The officer in charge shall:

"Ensure that the prisoner van, when not in use during the normal operation of the courts, is parked in the designated spot on Duke Street;"--in the appropriate place.

"On hearing the alert signal, contact communications, advising that the court building has a fire alarm and the number of personnel and prisoners present. Request that available patrol cars be dispatched to the area of James and Duke streets to assist in any evacuation of prisoners;

"Not commence to move any prisoner until additional personnel arrive, unless immediate evacuation is necessary;

"Stand by the south main entrance or the northwest door to allow access of personnel...."

It goes on and on; so the evacuation plan is clearly defined and provides the instructions in some detail.

Mr. Philip: Either it was defined after my visit or at the time of my visit the officers in charge did not know what the procedure was. The thought of putting somebody in an elevator and getting in with him himself when there is a fire--I have pictures of fried prisoner and fried constable.

You talked about criteria in judging your priorities. You said, "There is only X number of bucks." But some of the items in this report are basically very inexpensive items to correct. I wonder what priority you put on safety. Here you have a case. I do not know how much it costs to put an extra rung on a fire escape ladder, or whatever it is that you have to do, but having a fire escape ladder that goes only to the second floor does not make very much sense. It is not a terribly expensive thing to correct.

One wonders why there is no system in place--at least there was not at the time this report was prepared--that would have caught something like that. It is dangerous to have a whole bunch of people, let alone people who perhaps are in handcuffs or some kinds of restraints, in a building that does not have a way of escaping in case of fire.

Mr. Raymond: What I indicated in my opening comment was that the Provincial Auditor's observations were indeed fair. I meant what I said. I have to agree that there are instances that have now been drawn to our attention that could be corrected without expending large sums. We have now instituted within the Ministry of Government Services an annual review whereby the district leasehold administrator will ensure total and absolute compliance.

There will be instances where we will turn to the landlord to take the corrective measures. Where that cannot be done and the cost can be justified, as Tony indicated, we will take some of the steps ourselves, and then we will attempt to resolve the issue with the landlord.

In the case of Welland, and I think the reference made was to Welland, some corrective measures have already been taken. We are having ongoing discussions with Mayor Hardy in Welland and some of the councillors, Mr. LaRose, for one, with a view to coming to a long-term solution.

I think the main allegation in the report was that we were in seven different locations. That is not quite accurate; we were not in seven different locations. There is nothing we would like better than to work with the community, if that is at all viable, to consolidate some of those facilities, at which point, if we were to enter into a long-term lease with the municipality, we would expect the more costly items would be corrected.

Mr. Philip: Assuming that health and safety is one of your priorities, can you tell me why it was that in St. Catharines I was informed by members of the union--and, indeed, I saw the document--that the Ministry of Labour had issued an order concerning the lighting? Here we have a brand-new court facility; the lighting is poor in the records part, yet when I asked the supervisor, he did not think there was any requirement to correct it or that in fact there had been an order. Can you tell us what happened in that case?

Mr. Guy: We are trying to find out the report to which you are referring. Perhaps you could give us a little more information on what the report was, when it was issued and to whom, because we are not aware of it right now.

Mr. Philip: If I am not mistaken, it was the land titles office. In the land titles office, the lighting was so poor that people were complaining of headaches and migraines and having to go home. The Ministry of Labour sent up a health and safety inspector; he issued a report. As I recall, the report was not posted, but the union managed to get a copy of it and gave me one. The manager of that office, who seemed like a very decent sort of person, simply had not realized that some action was necessary on a Ministry of Labour order.

Mr. Raymond: Was that prior to 1984?

Mr. Chairman: I am going to let you respond, but I want to encourage the members not to wander too far, because we are dealing with the auditor's report here. Apparently, this was not an area touched upon. I have allowed you to continue at length, Mr. Philip.

Mr. Philip: I do not know why it was not touched upon. That was one of the problems in that area.

Mr. Chairman: In any event, we will let you respond, but I urge you to try to confine your further questions to the report.

Mr. Raymond: If this is of any assistance, back in August 1984, as part of the energy conservation package, a certain type of lighting was used in a number of areas throughout the building. Apparently, in August 1984, task lighting at various key positions was installed to assist, and I presume, to overcome some of the difficulties you have described, Mr. Philip. I am not sure whether that was done in response to or after the Ministry of Labour's report.

Mr. Philip: You are saying it has been corrected.

In conclusion, I am not asking you to do it today, but can you supply us with a list of the criteria you use in deciding your priorities and a detailed list of your responses to each of the items that are pointed out in the auditor's report; in other words, where they are? I do not find it acceptable to say the ministry has indicated corrective action has been taken and is currently under active consideration for 47 of these items. I would like to know which ones have been corrected and how.

Mr. Raymond: I think you will find, as an addendum to the auditor's report, a copy of the response we tabled with the committee back in June 1986. We will gladly undertake to update that response if it will assist you in determining exactly where we are at on these various issues.

On your first request, I am afraid this would have to be a corporate response, because each line ministry helps determine priorities for the government. For instance, my colleague Mr. Chaloner in his ministry will use whatever criteria he sees fit to establish a list of priorities with his minister and his senior officials, as would my colleagues in the Ministry of Correctional Services or the Ministry of Health when it comes to psychiatric facilities.

There is a process in place where the end result, the corporate list, is considered and approved by Management Board. The process does not start and does not end in the Ministry of Government Services. MGS is but one of the many players in this exercise. In other words, we do not set priorities for our clients.

Mr. Philip: I understand that, but you are the only deputy minister at the table, so you are the one who gets the assignment.

Mr. Chairman: Anything further from members of the committee?

Thank you very much, gentlemen. We appreciate your appearance here today.

That concludes our business for the day. We will reconvene at 10 o'clock tomorrow morning.

The committee adjourned at 4:21 p.m.

CA2QN
XL21
-P73

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COURT FACILITIES

FRIDAY, MARCH 27, 1987

Morning Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Barlow, W. W. (Cambridge PC)
Davis, W. C. (Scarborough Centre PC)
Epp, H. A. (Waterloo North L)
Philip, E. T. (Etobicoke NDP)
Pope, A. W. (Cochrane South PC)
Sargent, E. C. (Grey-Bruce L)
Smith, D. W. (Lambton L)
South, L. (Frontenac-Addington L)
Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South
Gregory, M. E. C. (Mississauga East PC) for Mr. Davis

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor
Mishchenko, N. J., Director, Special Assignments Branch

From the Hamilton Law Association:

Turnbull, J., President

From the Hamilton Criminal Lawyers' Association:

Zabel, B., Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Friday, March 27, 1987

The committee met at 10:07 a.m. in room 151.

Mr. Chairman: Come to order, please.

Mr. Gillies: Mr. Chairman, on a point of order: This is in regard to the IDEA review. Some correspondence has been circulated to us by a company. I will not use the name now, because I am not sure it was the intention of the company that it be made public at this time. These are letters addressed to you as chairman.

Mr. Chairman: I do not think the company is reluctant about its name being used.

Mr. Gillies: Anyway, it appears to be another IDEA portfolio company that is on the rocks. The president was observing our hearings this week and spoke to me several times. He may have spoken to other members too. He has a number of complaints and allegations about the Ontario Development Corp.'s handling of his company and indicated to me--I do not know whether he spoke to others--that his company may go down the tubes next week. I just want to know what we are going to do.

If some of the talk on the street is correct, that there could be another 10 or 11 of these disasters, I do not see how we as a committee can get into all of them. On the other hand, this information having been brought to our attention, we have an obligation to set some course of action that will get to the bottom of it to see whether the rather serious charges this gentleman makes are correct.

Mr. Chairman: Right. We will allow a representative from each caucus to have a bit of time on this.

Mr. Philip: When I met with the gentleman, I suggested I was prepared to meet with him again and get more detail, but because of the nature of the allegations, I also suggested the independent review we might want could probably be done best by the Ombudsman of Ontario. The Ombudsman has done many investigations of businessmen who feel aggrieved by the system. I suggested to him who he should contact--namely, the director of investigations at the Office of the Ombudsman--and gave him my card and suggested he might say that I thought it was a matter of importance.

Depending on the schedule of the corporations, the Ombudsman has authority over some and not over others, but I thought that was an initial area for its lawyers to find out a description of the situation in an objective way rather than our simply taking information being provided to us cold. I suggested he also contact the chairman of this committee, who has some experience with the Ombudsman's work and so forth. Possibly, the subcommittee can meet and deal with it, but I do not think we can deal with it at this time when we have witnesses here.

I am not sure it is the Provincial Auditor who should deal with it, unless there is a whole pattern of breakdowns and squandering or misuse of

public money. If it is what I would call a government making bad decisions and hurting someone's rights, then I see it more of an Ombudsman's function and a function of the Ombudsman's committee rather than this. It is easy for me to say that since I serve on both committees and therefore am able to juggle and make these distinctions, but if the committee wants to deal with it, I am open to it.

Mr. Wildman: May I make one short comment in regard to what my colleague has said? I agree with what he said. There is one problem, however, in my experience: an Ombudsman's investigation, after an initial inquiry, can take up to six months. If this person is looking to his demise next week, it is not going to help him a great deal.

Mr. Philip: Yes. I really wonder, though, if the demise is as close as next week, whether anything this committee will do is going to save it.

Mr. Wildman: That is true.

Mr. Philip: That is unfortunate, but I am not sure. Perhaps the subcommittee should meet with the gentleman in question--I see him here--over the lunch hour. I have an appointment at 12:30. Bud, can you fill in for me at 12:30?

Mr. Ferraro: I just want to say a couple of things. I have a tendency to agree with some of the comments made, particularly those of Mr. Philip. I do not want to make light of this company's problems, but I say with great respect, I personally know situations--and I am sure we all do--where there are significant problems and indeed significant problems dealing with various ministries of the government. On the other hand, if you want to get the other side of the picture, there are a lot of very positive reactions from the community at large.

Unless there is something quite serious as far as impropriety and the government having its fingers in the cookie jar are concerned, quite frankly, I think the committee could spend its entire deliberations every day on situations where people and businesses--I say this respectfully--figure the government is not giving them enough attention or is treating them unfairly. That is a reality. We cannot be everything to everyone, unfortunately.

In conclusion, perhaps the best approach is for the subcommittee to deal with it. At the very least, if this company has allegations and has submitted them in writing, we may want to get them further analysed or summarized or we may want further presentations to be submitted. But let us face it, we do not have the time, and if the demise of the company, God forbid, is next week, there is nothing we can do to save it.

Mr. Gillies: I just want to clarify it. I do not disagree at all with Mr. Ferraro. He is quite right; we have any number of companies contacting us all the time about various programs and so on. If you read the letters, some of the unhappiness and some of the complaints being expressed are very similar to those Mr. Graham was making about the ODC handling of his file. There were a number of similarities in the complaints, so I raised it in case the committee might feel it should be looked at in that context.

Mr. Chairman: Are the subcommittee members prepared to sit down with this gentleman some time today? I was going to suggest 1:30. That puts a bit of a constraint on it. If we do it at 12 or 12:30, most things can roll on; 1:30 here? All right.

Mr. Epp: Mr. Chairman, on a point of order: In an exchange of views yesterday with the member for Etobicoke (Mr. Philip), you recall that at one point I asked to have a supplementary and he did not permit me to have it. Subsequently, I denied him an opportunity to have a supplementary, and then he made the reply that he was more popularly elected, or something to that effect, than I was.

Mr. Chairman: This is a point of order, is it?

Mr. Epp: He said he was getting more support in his riding than I was. It has been drawn to my attention that he won by 54.3 per cent last time, which is substantial, but I won by 54.6 per cent. His accusation that I won by less than he did is completely unfounded, and I think he owes this committee an apology.

Mr. Ferraro: Could we have the auditor check into those statistics?

Mr. Philip: I propose the auditor supervise a wager as to the plurality next time.

Mr. Wildman: I would suggest that simultaneous translation translate that exchange as, "Na-na-na-na-na-na."

Mr. Philip: Your party now has its own version of Yuri Shymko.

Interjection.

Mr. Philip: It is a good thing I said it in committee; I could probably be sued if I said something like that in the hall.

COURT FACILITIES

Mr. Chairman: We will get on with our regular agenda. Our first witness regarding the courthouse facilities is the Hamilton Law Association. Would Mr. Turnbull and Mr. Zabel come forward, please? Welcome to the committee, gentlemen. Could you identify yourselves and your roles in the association for the purposes of the record?

HAMILTON LAW ASSOCIATION

Mr. Turnbull: My name is Jim Turnbull. I am the president of the Hamilton Law Association. To my right is Bernie Zabel, the vice-president of the Criminal Lawyers' Association in the Hamilton-Wentworth area.

As the members of the committee are probably aware, due to the concern we had with respect to the court facilities in the Hamilton-Wentworth area, the Hamilton Law Association, together with all the users of the court facilities in the Hamilton-Wentworth area, prepared a rather extensive brief and submitted it to your committee to assist the Provincial Auditor in the report which this committee directed him to undertake.

Aside from that, the purpose of the report was fourfold: (1) to emphasize the neglect in planning of court facilities which has taken place in the last 20 years in the Hamilton-Wentworth area; (2) to emphasize the neglect in consultation with the people who are working in and using those facilities on a day-to-day basis; (3) to emphasize the neglect the government has given to the facilities themselves in the day-to-day maintenance of them as the judicial system has changed and evolved over the past 20 years, and (4) to emphasize the neglect and in our view total irresponsibility exhibited by governmental spending on some of those facilities.

1020

At the outset, I must advise this committee that I have not read the Provincial Auditor's report in total, nor has Mr. Zabel, frankly, because it has not been made available to us. However, I have learned that in essence the Provincial Auditor is stating he did not find that there was the neglect in the courthouse facilities in this province that Mr. McAuliffe had indicated in his CBC report.

As president of our association and on behalf of the user committees in the Hamilton-Wentworth area, I wish to make it very clear we totally disagree with what the Provincial Auditor has had to say. We do not find his findings are supported by the facts, and we come here today to state that in our opinion Mr. McAuliffe's reports on the CBC were not only an excellent piece of investigative journalism but they were, as the auditor has indicated, substantially correct and they should be credited as being such. Because of his initial reports, we instituted a detailed review of matters raised by him and put our brief together, and we have undertaken extensive consultation with the government in the past year, largely due to the impetus given by the CBC report.

We are also here for a second reason. We wish to make certain, not just in the Hamilton-Wentworth area but across this province, that there is not a repetition of the poor planning, poor consultation and poor expenditure of public funds that have taken place in courthouse facilities across the province over the past 20 years. I will not deal long with details. Mr. Zabel is going to highlight some of the more glaring deficiencies.

In a nutshell, you should understand that in Hamilton we have rather disparate court locations. Some of you who have had an opportunity to read our brief will recognize that we have a district courthouse located at 50 Main Street East. Essentially, Supreme Court and district court civil and noncivil cases are heard there. At another location, 125 Main Street East, we have about five sevenths of our provincial court (criminal division). That facility in itself is in serious condition.

Two and a half blocks away--not one block, as the auditor has said--we have two of our other judges of the provincial court in a totally inadequate building which, for some reason, someone attempted to alter and make into a courthouse, and it is a disaster. We have there not only the provincial court (criminal division), where we have individuals waiting to be charged on sexual assault or whatever criminal offence, but in the planning ingenuity of this government we also have a small claims court, so that a person or a lady who is sitting there with his or her child waiting to go into the small claims court to sue on a contract is sitting next to some of the tougher elements in our community.

We have three locations there. We have provincial offences, where we have all the driving offences such as highway traffic and bylaw courts at another location where there is no parking. Until we urged the government, we had a fifth location in Dundas where some criminal cases were heard, but we urged the government to shut down Dundas because we were wasting taxpayers' money on that lease and did not need it. I am pleased to advise that at least that will take place in April or May of this year.

You have an idea, generally, that we have rather disparate courts. That is just the tip of the iceberg as far as the problems are concerned. It causes confusion to members of the public, unlike what the auditor says. I practise

law; I do litigation. I know these many locations cause confusion for the members of the public. They cause confusion when at the last moment judges have to be transferred from one court to the other. They have been given slips to go to court A, but because of last-minute administrative changes, judges end up in court B. It is not fair to the public. In the winter, if anybody has any type of disability, it causes significant problems. It is a simple lack of planning that has taken place over the years, and I do not feel the auditor has emphasized that enough in his report.

If I might, I am going to refer briefly to some of the auditor's comments in his report. I am not going to go through the whole thing, because number one, I do not have it; I have just highlights of it.

1. At 50 Main Street East, the district courthouse, in 1982, \$400,000, I heard--and it might be more than that; I have never gotten the exact figure, and I think it might be incumbent on this committee to consider getting a hold of the figure from the responsible government people--was spent on holding cells for persons awaiting trial or during the course of their trial. Those cells have never been used. The \$400,000--if it is that figure, and I understand that is a conservative estimate--which was spent without any consultation whatsoever, might just as well have been poured down the drain.

Mr. Ferraro: What year was that?

Mr. Turnbull: It was 1982.

Mr. Philip: Does the Provincial Auditor have any comment on that?

Mr. Turnbull: Yes.

Mr. Philip: I am just asking if you--

Mr. Chairman: I do not want to get into this when the gentleman is making his statement. Please proceed.

Mr. Gillies: It is in the report.

Mr. Philip: I know it is in the report. I just thought he should comment about it.

Mr. Turnbull: There is a reference to that in the report, I understand, and the reference is that the ministry is reviewing a proposal to utilize these unused cells for young offenders. They were reviewing it, I can advise you, at a meeting this week with ministry officials. I and everyone else on our user committee, including judges and so forth, were advised that those cells will not be used for youthful offenders because they feel the youthful offenders can be accommodated elsewhere, for valid administrative reasons, within the system. Therefore, those cells are continuing at this time to remain unused. I am not going to beat a dead horse. It is a simple example.

A senior judge of the Hamilton-Wentworth district, Judge Gordon Sullivan, is as open and receptive an individual as you possibly can have on the bench. He was never consulted about it. The bar was never consulted about it. The police were never consulted about it. Nobody was consulted about it. Somebody in government decided this was to be done.

We find that type of expenditure of money, \$400,000, for something that cannot be used when you have the rest of the system in a relative state of

disarray and neglect, is just irresponsible spending. I trust that at least somehow, some way, it will be looked into as to who directed that it be undertaken, why those funds were spent, what the need was and what type of study was done and consultation took place before the responsible persons undertook it.

The same comments apply with respect to the establishment of the provincial court at 140 Hunter Street in the city of Hamilton. Mr. Zabel will go through some of the problems there. But suffice it to say that when interviewing a person before a trial, I know as a practising lawyer, and I speak on behalf of the bar, we have to interview people out on the street; there are no interview facilities. I know as a practising lawyer that the lighting system, the security system and so forth in that building are totally inadequate. We cannot understand how a significant sum of money again was spent on a totally inadequate court facility, on a stopgap measure, without any consultation. I can assure you that the bar, the bench and everyone who has to use that building are not only dissatisfied with it, they are very unhappy that there was no consultation before the decision was taken.

The auditor says there is no problem with respect to the neglect of the courts. I cannot emphasize it enough: We disagree with his interpretation of neglect. As far as we are concerned, his report does not, for the sake of this committee, accurately reflect neglect in the sense in which a committee such as this should be looking at it.

Second, the Provincial Auditor's report is incorrect because it states somewhere in there, I believe--and again I have not read it; these are phrases that have been given to me--that the problems at 125 Main Street East, the main facility for the provincial court (criminal division), have put Hamilton within the Attorney General's five-year plan for capital improvements so that a centralization process will take place.

That statement is incorrect. At a meeting on March 24, 1987, we in the Hamilton-Wentworth area, our user committee--all the authors of this report together with the district court judges--were advised that it is not a five-year centralization program at all. It is in the circumstances, because of lease negotiations and so forth, eight to 10 years and very probably 10 years that we are being asked to continue to work in these inadequate premises.

Modifications are going to be made to the existing facilities. It is what we said in our report nearly a year ago; it is more Band-Aids to a bleeding problem. We understand the problem of the government with respect to the lack of money. We understand that there may be other areas of the province that have greater need or greater priority, and those have to be set by government. We understand that. But what irks us, not just as lawyers and as users of the system but also as taxpayers, is when we look around and are told there is not enough money but we see significant sums of money that have been wasted on inefficient and ineffective facilities. So the second point is that the auditor's report--you should be aware of that--is incorrect on that.

1030

Third, the auditor has indicated that the holding cells at 125 Main Street East held more than 40 prisoners on only four occasions during the past year. I can advise you first of all that if any of you came and saw those cells when they are holding 24 or 25 people, you would be shocked with the facilities. I can also advise you that when I became president of the law association and after hearing Mr. McAuliffe's CBC report, I went and looked at

the situation. Frankly, I am embarrassed to say that as a practising lawyer in those courts I had become so immune to it over the 15 years I had practised that I was used to it, but when I looked at it with somewhat of a detached, questioning eye, I was shocked.

I went to the minister in our area, Ms. Munro. I spoke to her on a Saturday morning, and I said, "I want you to come with me to the provincial court and tour it." Initially, she was not too keen because I guess she had a busy schedule, but in fairness to her, she came on the Monday morning. I believe it is fair to say, and I think she said it publicly, she was absolutely appalled at the conditions. On her tour of the facility, she went into the holding cell area and looked around. I could not believe it myself; not only was it crowded, smoky and hot, but in that holding cell area, there are two washrooms and prisoners were sitting on the floor on each side of the toilets waiting to be taken into court. They were put into the toilet areas to segregate them from the other prisoners because either they needed protective custody or they were youthful offenders.

That is the state of neglect that things had deteriorated to before Mr. McAuliffe's report. When the Provincial Auditor says there was not a state of neglect and they are just minor repairs, he is wrong. That is our opinion, firmly expressed before you.

He said also that on only four occasions in the past year had 40 prisoners or more been in those holding cells. Quite coincidentally, and I say coincidentally because I happened to be speaking to the officer of the Hamilton-Wentworth Regional Police who has to work in that deplorable holding cell facility, and he advised me and showed me the figures--unfortunately, I have not made copies of them, but I have them right here for you.

Mr. Wildman: Do you think you can supply those?

Mr. Turnbull: Yes, I will.

Some time ago, without knowing this was even going to be in the auditor's report, he happened to give me figures from November 1986; they show that there were four occasions in November 1986 alone when there were more than 40 prisoners in those holding cells. They are all broken down by categories for you. Copies will be given to the clerk. In January 1987, I am advised, and the figures on this sheet will show, that 56, 56 and 51 prisoners went through those cells on three occasions, namely, January 28, 29 and 30. In addition, on seven occasions in total in that month, there were in excess of 40 prisoners in those cells. On another day, I know there were 38 prisoners; I see it from the figures. In those two monthly reports alone that I just happen to have in my possession, I can state to you from the information I have that the auditor's report is inaccurate; it understates the severity of the problem.

Fourth, the auditor has indicated that Mr. McAuliffe has exaggerated the statement with respect to the number of persons who are processed through the criminal court facilities in Hamilton. Mr. McAuliffe indicated, I believe, the figure was around 50,000 persons. With respect to criminal offences themselves, it is not 50,000. My information is that the auditor is correct, that it is somewhere around 17,000. But within the system of courts I have described to you, there are approximately 150,000 charges that have been laid and are being dealt with within the ambit of the provincial court criminal and traffic divisions in Hamilton. I am not saying the auditor is incorrect in that, but I think it is important that you members of this committee obtain full figures as to the usages of the courts that are the subject matter of concern in our report.

Fifth, I have already talked about the conditions at 50 Main Street East and the improper expenditure, in my view, of whatever sum of money it was for these holding cells. When you look at our report, you might also be interested in something that came to my attention the other day in speaking to a judge. Whoever the fellow was who designed this scheme, he installed a new elevator not only to bring the prisoners from this holding cell down in the basement up to the courts, but the judges are supposed to use the same elevator as the prisoners.

Another thing was not even considered. I understand a major reason these holding cells have not been used is that nobody decided to realize that when you have holding cells, you need to have moneys set aside to pay for the staff to take care of the prisoners in the cells. Nobody has ever addressed that, so they have sat empty, while people are sitting beside toilets 200 yards down the street at 125 Main Street East, waiting for their day in court.

As a lawyer in Hamilton, having interviewed people in the judicial system in those toilets, having had to interview people in whispers in the hallway because there are no proper interview facilities, I and the 500 members of the Hamilton bar, as well as the judges, the probation and parole people, the Elizabeth Fry Society, the John Howard Society--everybody concerned with the administration of justice--find it appalling. In our review, we say loudly and clearly, there is evidence of neglect of the court facilities in the Hamilton-Wentworth area. To the extent that the auditor has said there is not across the province, he should qualify it and say there is in the Hamilton-Wentworth area.

In conclusion, I will say this: In the past year, since the squeaky wheel has started demanding to get some oil, I must say in fairness that the response of the people from the ministries of the Attorney General and Government Services has been significant. Consultation has been undertaken. While I am not happy with the interim plans that have been proposed to Band-Aid the solution, I must say they are much better than what existed.

Finally, it appears the Attorney General and Government Services people are coming to a recognition that to plan court facilities in this province, you cannot just do it today; you have to look ahead. You have to project five and seven years ahead, start to co-ordinate leases coming to an end and start to plan facilities in advance. Those steps have been taken in the past year, but in our view, for members of the public and the administration trying to deal with the Ministry of the Attorney General and the Ministry of Government Services and find out who is doing what, it is virtually impossible. If I as a lawyer have trouble doing it, what do average persons in the community do?

Is it not time, at least with regard to the courthouse facilities, that some consideration be given to directing that the office of the Attorney General, which I understand has a budget for leases and so forth, also do the negotiating and co-ordinating of the leases and cut down the confusion that has taken place? Two examples of this have come to mind in the past year; I have noticed them in my role as president.

First, in Hamilton, I believe \$10 million is being spent on the unified family court. That is good, it is necessary, it is probably long overdue. The only problem is--and remember the historical context of this; the only reason that was done was that the unionized employees within that court finally went to court and got a court order requiring the government to do something about it. Because of the court order, it was necessary to divide the court; now it is in two locations, and the judges and members of the public are having to shuffle back and forth, trying to determine which court they are in.

Mr. Wildman: This is because of overcrowding?

Mr. Turnbull: Precisely.

We have to work in this situation for the next two, three or four years, until this new unified family court building is built. That is not planning; it is knee-jerk reaction to an emergency situation.

At the present time, at 125 Main Street East, we understand a new lease is to be signed for a 10-year period with an option to get out after eight years. In the meantime, \$500,000 is to be spent as a Band-Aid approach to try to make the situation better in the interim.

1040

I recognize there are limitations with respect to funds, but my point is simply that this problem was known by this government and prior governments years ago. We pay people to assess the courts and look at the problems. Somebody has not done it. What has happened is that lease has expired, and with the expiry of the lease, the government is in a position of impossible negotiations. You know and I know, if the landlord turns around and says, "Get out," you are out on the street; your leverage in negotiations is significantly diminished.

It is our view that in the planning of these facilities--and I do not criticize the ministers, because they should not be looking after those details--the government bureaucrats should be directed to look ahead, to exercise foresight, to anticipate negotiating positions as court facilities are centralized so that we can save money for the taxpayers; so that when we go ahead and do renovations, they are not knee-jerk reactions but planned, deliberate steps. The taxpayers of the province are going to be better served. The people in the judicial system who have to face charges before the courts are going to be better served. And the whole administration of justice, which in my view is being badly shaken by inadequate facilities, is going to have better esteem in the eyes of the public.

Over the next 20 years, it is our hope that with governmental assistance from folks like you, the people dealing with the bureaucratic issues, the leases and the planning of courts will be monitored much more carefully by our elected representatives.

I talk a lot and I am sorry to take so long. Unless you have further questions of me at this time, those are all my comments.

Mr. Chairman: Thank you.

Mr. Zabel, do you wish to make a separate statement?

Mr. Zabel: Yes, I do.

Mr. Chairman: Please proceed.

Mr. Zabel: I would like to say at the outset that the Hamilton Criminal Lawyers' Association was very gratified to hear Mr. McAuliffe's comments on CBC Radio. We support his statements in their totality. On the other hand, when I comment on the Provincial Auditor's report, I am going to be commenting with the disability that Mr. Turnbull had; I have not seen the report, but I have been advised of some highlights of the report.

On first blush, when I saw the comments, I thought the auditor was supporting Mr. McAuliffe, because the auditor makes a lot of statements that Mr. McAuliffe's comment is substantially correct, but then he backs off on that. I do not know what "substantially correct" means. I thought that meant he was supporting Mr. McAuliffe, but apparently not. Perhaps "substantially correct" is like "substantially pregnant." I am not sure exactly what that means.

I do not agree with the conclusions of the Provincial Auditor's report. Perhaps one of the problems with that report is the facts he relied upon. It is my understanding that the Provincial Auditor never interviewed any of the users who contributed to our report; they are listed on the four-page appendix to the report. One would have thought--I presume he had the report before him--he would not only consult with the ministries of the Attorney General and Government Services but also speak to the users who prepared this report, the law association, the judges, the police, etc. Perhaps that is one of the reasons for the deficiencies in his report as far as Hamilton is concerned.

I would like to briefly give you a flavour of what we see as the neglect in Hamilton in the provincial court (criminal division). The main facility, as Mr. Turnbull has told you, is at 125 Main Street East. You have already heard that it is overcrowded and dirty. There are numerous deficiencies; I could go on all day telling you what they are, but they are in the report. I would just like to highlight a few of them for you.

You have heard that the holding cells for accused persons are overcrowded. There is inadequate ventilation. Everyone is mixed together; there are male offenders, female offenders and young offenders, who are supposed to be separated, but they are all mixed together because there is just not enough room.

You have heard that prisoners are being interviewed in washrooms. There are no interview facilities in the holding area. I as a lawyer cannot interview my client in private; I have to speak with him through bars or in a crowded hall, and there are other people listening to what I am saying to him.

I feel very sorry for the Hamilton police, because they are prisoners back there too in those inadequate facilities. In the winter it is cold, so the police brought in some space heaters to try to keep the place warm. In the summer it is too hot because of the inadequate ventilation. It is a very sad situation back there for the prisoners and the police.

Many of those prisoners are people who have had bail posted but have been unable to meet the bail, so they are stuck there and they are being treated like cattle. That is a very soft statement to make. If you went to one of those prisoners and told him that under our system of justice he is innocent until proven guilty, he would not believe you, because he would ask you, "If I am innocent until proven guilty, why are you treating me this way?"

The judges have to walk through the holding cell to get into their courtroom. Luckily, no incidents have happened yet, but I can see the potential there. In the morning, the judge walks through the holding cell to go to his courtroom and in the morning break he then has to go back through the area where there might be a prisoner he has just finished sentencing. You can see the explosive potential that exists there.

The John Howard Society, the Salvation Army and others all have to crowd back there and try to talk to people. There are no interview rooms. There are

two interview rooms that lawyers can use for people who are not in custody, but one doubles as a storeroom. Those are two interview rooms for five courts, which is totally inadequate.

The legal aid office, out of which duty counsel work, has one room to interview people for five courts. There are least two, sometimes three, duty counsel working there in the morning, and that is totally inadequate. In fact, most of the interviews take place in the crowded hallway where police officers, victims and accused are all standing around and intermingling in this crowded hallway at the main provincial court. Again, those are all examples of the neglect that presently exists at the main provincial courthouse in Hamilton at 125 Main Street East.

You have heard we have a courthouse at 140 Hunter Street East where there are two courtrooms for two provincial court judges and the two judges have their offices there. Those two judges are isolated from the other six judges who are at the main courthouse. There is inadequate security for the judges at Hunter Street. In his courtroom, the judge is a few feet away from the accused who is testifying. Also, the prisoners' dock is very close to where the judge is sitting. There was an incident that happened to Judge Zuraw, which is set out in our report, where he was assaulted by one of the prisoners who just jumped up at him. It was very easy for the prisoner to do that because he was not that far away.

There are no facilities for probation and for an accused person to pay fines at Hunter Street. If an accused person is put on probation, he has to go to 125 Main Street the next day to sign the probation order. Technically, the accused is still in custody until he signs that probation order, but he is let out and it is hoped he attends the next day.

If an accused person is ordered to pay a fine immediately, he is held in custody because he cannot pay a fine at Hunter Street. He has to be held in custody for a certain period of time and then taken back to the main courthouse where he can make payment of the fine. There is no duty counsel available to assist accused persons at the Hunter Street court. There are two courtrooms there and no duty counsel to help an unrepresented accused.

As a result of this fragmentation, as Mr. Turnbull has told you, there is a lot of confusion in our courts. One example is that an accused person normally attends at 125 Main Street East for his court appearance and then he is remanded for a trial date. If that trial is at the Hunter Street court, on many occasions the accused person shows up at the Main Street East courthouse. His name is not on the court list there; so he leaves. Then he is charged with failing to appear because he did not appear in court.

The same thing happens with crown witnesses and victims. They show up at the wrong courthouse on many occasions. Their trial is being heard, say, at the Hunter Street court but they are not there. The crown pages their names when the case is called, no one responds and the crown is forced to withdraw its case. This has happened on a number of occasions. The witness is at 125 Main Street East. He does not hear his name being paged because the courts are not tied together, so you have cases being withdrawn because of the confusion that exists in the fragmented court facilities in Hamilton.

You have problems with police officers who are sometimes subpoenaed to be in court on two cases at once, which is not a problem if you are at the Main Street court because you can be in one court testifying and then your case can be held down in the other court. But if he is at Main Street and they

call the case at Hunter Street, the officer is not there, the case cannot be proven and the charge is withdrawn. It is not fair to the public to have that situation exist.

I think members of this committee realize that all the criminal cases start in provincial court (criminal division) and most of the cases are disposed of there. It is essential for the proper administration of justice that adequate facilities be made available for all the users of the system, the public, the judges, the accused, the lawyers, the police, the court reporters, etc.

1050

I think I can state without fear of contradiction that the present facilities in Hamilton contribute to an assembly-line system of justice. You have to process people very quickly because it is just too crowded. You have to get them out as fast as possible, and that is not the proper way of handling the proper administration of justice in the city of Hamilton or elsewhere in Ontario.

An accused person who is in custody is treated like a piece of cattle. He has to be. It is not the fault of the police. They have no choice. It is overcrowded. As I said, the police are prisoners there as well. This shocking and neglectful situation cannot continue to exist.

There are some encouraging signs. There has been consultation, as Mr. Turnbull has said, but so far nothing has happened. There is confusion in the consultation. The auditor thought we had a five-year plan to get out of the present facilities and into an integrated criminal court system in Hamilton. Now we hear it is a 10-year plan. Hopefully, the members of this committee will look into this to ensure that not only will adequate facilities be built in Hamilton, but they will also be done as soon as possible.

Subject to any questions you have, I have no further comments to make.

Mr. Chairman: We will open it up for questions at this point.

Mr. Philip: The figure of \$400,000 was used with regard to the Main Street East cells which are not used. My question is to the Provincial Auditor. Can you confirm whether that is the amount of money that was wasted on those cells?

Mr. Archer: We do not have the figures with us, but we can certainly confirm that by reference to the ministry.

Mr. Philip: Would it also be possible to find out who was responsible for this wasting of the taxpayers' money?

Mr. Archer: Obviously, it was one of the two ministries that were here before you yesterday. Yesterday was the time to ask that question, not today.

Mr. Philip: We did not have the figure yesterday, with respect. You did not put it in your report. You put in the fact that the cells were empty, but there was no cost figure on it. So it was impossible to ask about that figure yesterday. May I also ask the auditor for the list which I asked for yesterday, as to whom he spoke in the various inquiries. Who did he speak to in the Hamilton courthouse inquiry?

Mr. Mischenko: With respect to the Hamilton facility and all facilities we visited, the initial intent was for us to go in and to determine whether the concerns raised by Mr. McAuliffe were accurate. In the course of discussions, we would have spoken to a number of other people in the facility just maybe for guidance in showing us the locations that he was referring to. They were Mr. Flis, the court administrator, Reno Violin, sheriff, Mr. McNeilly, who is a court administrator in the family courts, Vicky Hamilton, a clerk, and Barry Lowe, who is a legal aid director.

Mr. Chairman: Mr. Philip, before you continue, if you have no strenuous objections and will just put your questions on hold, perhaps it might be helpful if the Provincial Auditor had a few minutes to respond to what was said and it may assist us somewhat. Any objections?

Mr. Archer: I will not take too much time, but with the allegations that have been flung at the Provincial Auditor's office in the last few minutes, it seems to me that some comment is in order.

I might just start off by saying that there is no mystery to the term "substantially correct." It means correct in all essential respects, to all intents and purposes. The substance of the matter is beyond dispute. What it means is it may not be 100 per cent correct. There may be some minor inaccuracies that do not affect the substance of the latter.

However, having gotten that definition out of the way, let me say--

Mr. Epp: Could I just ask the auditor to give an example of one or two things? He gave us examples yesterday of where Mr. McAuliffe named \$50 million and, in fact, it was \$48 million. Just one or two examples to underline what he means by "substantially correct," for the benefit of the people here today who were not here yesterday.

Mr. Archer: Probably the first example in the report is as good as any. The comment was, "This is a \$50-million facility scheduled to open in August 1986. It took 10 years to plan and build." Actually, it took only eight years to plan and build, but we say that is substantially correct because the substance of the comment is it took a long time. If it had taken 10 years, we would simply have said this comment is correct, so it is that type of difference between "totally correct" and "substantially correct."

Mr. Philip: Would you not agree that on occasion in this report you have used the words "substantially correct" when it was 100 per cent correct and not substantially correct?

Mr. Archer: There may be one or two instances of that, but I tried to explain that yesterday. In some cases, there were implications in what was said that we felt should be commented on. Therefore, we used the term "substantially correct" as opposed to "totally correct." There is such a slim difference between the terms that I am surprised any reader would read "substantially correct" as being much less serious than "totally correct." However, since it has bothered a lot of people, I thought I should mention that.

Anyway, to get more generally to the comments that were made--

Mr. Wildman: Excuse me. Can I ask one short supplementary? Would it help if we were to change the term "substantially correct" to "correct in substance"?

Mr. Archer: It would not help me; it might help you. That is exactly what it means.

Mr. Ferraro: Why do you not hand out dictionaries to everybody, Mr. Chairman?

Mr. Archer: I sat here and I was simply amazed that Mr. Turnbull and Mr. Zabel could be as critical and as emotional about the content of our report without either of them having read it. Incidentally, the report has been available to the public since Monday and it would seem to me that with a little effort you could have obtained a copy. At any rate, when they read it--

Mr. Ferraro: They were substantially correct, though?

Mr. Archer: I disagree with that.

Mr. Epp: Or correct in intent?

Mr. Archer: Or incorrect. When they find the time to read it, they will find that we did not make most, if not all, of the statements that they said this morning we had made. We just did not make them.

The gentlemen have completely misunderstood the purpose of our report. We did not go out to undertake to assess the adequacy of the court facilities in Ontario or to identify the inadequacies and how and why they exist. What we were given was a series of criticisms or comments from Mr. McAuliffe, and we were asked to go out and give an independent opinion as to the accuracy of those statements. There were approximately 50 such statements. We analysed each one and gave our viewpoint as to whether it was accurate, correct, substantially correct, overstated or otherwise.

In total, the context of the criticisms from Mr. McAuliffe was that the state of courthouses in Ontario was one of neglect. Based on the analysis of the 10 locations that he cited in his radio reports, and on our opinion that the sample would not be sufficient even to arrive at a conclusion as to the condition of the courts overall in Ontario, we felt there was not the evidence to conclude that overall the facilities in Ontario are in a state of neglect. They may well be, but in our opinion the evidence does not support that. There is not sufficient evidence to arrive at that. Any given courthouse may well be in a state of neglect. The two gentlemen here feel strongly that Hamilton falls into that category. That may well be, but in our opinion you cannot project the condition of one courthouse and say this is representative of the situation in the province.

Mr. Philip: Mr. Chairman, I think the problem of "substantially correct," my concern over it, why I was upset by it in the report and why the people appearing before us are upset, is taken in the context of the statement that, "We feel that many of the issues raised by Mr. McAuliffe were not as serious as implied or involved relatively minor matters." If we take "substantially correct" following that, it means that it is only partially correct or it may not be of a serious nature. It is not just a matter of semantics; it is a matter of the process that seems to be involved in this investigation.

1100

I find it interesting that of all the people the Provincial Auditor contacted to investigate these complaints, only one in that list would be what

I would call a user; namely, the clerk at one of the Hamilton courthouses. I find it very difficult to know how you can possibly check out a number of accusations by people whose very positions are as staff of the Ministry of the Attorney General and who perhaps would feel threatened by being completely open or by not giving at least some rationalizations. That may account for some of the rationalizations that are found in this report.

I want to ask you gentlemen a couple of things. As I understand it, the police officers can be in one courthouse, not find out that they are being paged in another courthouse and therefore a case would be dismissed. Would it not be remanded normally? What would be the nature of these cases? In other words, how serious an offence might get off as a result of this problem of the two courthouses?

Mr. Zabel: There are numerous offences before the provincial court. The offence of break and enter can have a maximum penalty of life imprisonment. For instance, if the matter is set for trial in the Hunter Street court, they call out the name of the police officer and he is not there because he is at Main Street, unless they call to Main Street and have someone run around and call his name there, they will not know that he is available but he is in a different court. Therefore, if he is an essential witness, unless the crown can show to the court why he is not there and have a valid reason, such as illness or his being in another court, it is not going to be remanded. It is going to be dismissed. They are going to be forced on with their case. The same thing will happen if the victim is not there but is at a different court.

Mr. Philip: Are you saying that serious offenders are getting released because of this problem?

Mr. Zabel: What I am saying is that individuals facing serious charges have had charges against them dismissed because witnesses or police officers were not available at the court and were not there because of the confusion that exists due to the court facilities.

Mr. Philip: I understand the distinction you are making with the use of the word "discharge," but one can assume that some of the people who have been discharged would probably have been convicted had the process worked more efficiently?

Mr. Zabel: I think that is a valid assumption to make, and generally speaking, the cases would not be recalled or a charge would not be relaid. That would probably be the end of it because it gets lost in the system.

Mr. Philip: One of the things I found most upsetting in what you said was that at 140 Hunter Street there is no duty counsel available.

Mr. Zabel: There is not.

Mr. Philip: So if you get somebody who does not speak too much English, or who does not understand the system or feels very intimidated, he or she may be tried without any counsel.

Mr. Zabel: You have to understand that duty counsel does not normally take trials. Duty counsel's purpose is to assist in guilty pleas and adjournments, so if a person is unrepresented for trial, duty counsel normally would not assist him anyway, but a person who wishes to plead guilty on his own would not have the assistance of duty counsel to speak on his behalf. A person who wishes an adjournment--

Mr. Wildman: Or to get advice.

Mr. Zabel: --or to get some advice as to how to handle the case would not have anyone there to assist him, whereas if he were at the other courthouse, there would be duty counsel there to assist him.

Mr. Philip: "Duty counsel" would also refer to legal aid, lawyers and people like that who could help these people?

Mr. Zabel: Duty counsel is a lawyer who is employed by legal aid for that day, and he would help in some way or give the person a list of lawyers to whom he could go to get counsel. That is not available at Hunter Street. There is no duty counsel there.

Mr. Philip: I recognize that you have not had a chance to read this, but I am sure you have seen some reports. The comment which is claimed by the auditor to be correct--not substantially correct--is that "the provincial court administrator informed us that for security reasons, bullet-proof vests were issued to the judges" in the Hamilton area. Do you know if that is correct? Are judges wearing these things, if they have been issued?

Mr. Zabel: I have no knowledge of that. I cannot dispute that comment or affirm it. Perhaps Mr. Turnbull can assist us on that, but I have no knowledge of it.

Mr. Turnbull: I have been advised by a judge that they have been issued. He has not worn it for the simple reason that they are too hot and too cumbersome.

Mr. Philip: Precisely. What purpose would a bullet-proof vest serve anyway unless somebody actually pulled a gun in the court, which has happened on one occasion in Toronto? Surely the real danger to these people is walking close to the prisoners and being physically assaulted rather than having somebody pull a gun on them or try to stick a knife in them?

Mr. Ferraro: (Inaudible) before the election?

Mr. Wildman: The point he is making is (inaudible) likely to have weapons--

Mr. Philip: The point I am making is that prisoners are normally searched before they go into court. I would have thought you would have had at least that much knowledge.

Mr. Epp: It may not only be prisoners--

Mr. Ferraro: Other people may have guns, not only prisoners.

Mr. Gillies: There was a shooting in Toronto; it was somebody observing the trial who had the weapon.

Mr. Wildman: Excuse me. The point that is being made is that the proximity of the judges to the prisoners is the concern--

Mr. Philip: It is more of a threat than the possibility of somebody shooting a gun or sticking a knife in the judge.

Mr. Turnbull: I think it is an equivalent concern. Obviously, in fairness, it is something that would not just apply in Hamilton. In my view,

there is less of a concern with respect to a prisoner who is in custody having any type of weapon or some means to assail a judge than possibly some member of the public or, alternatively, some witness.

Family courts are an especially difficult situation because of the emotional content of the cases. Witnesses, particularly at 140 Hunter Street, are literally standing over the judge's shoulder when giving testimony. The judge as he is taking notes, as an example, has to turn his book so the witness cannot see what he is writing in his book. It is very difficult for the judge.

Mr. Philip: I do not want to put words in your mouth, but obviously it may be some time before a complete new courthouse facility is built in the Hamilton area. One of the things I hear you saying is that leases are coming up, that they are not negotiated until close to E-day, namely, eviction day or whatever, and that perhaps what needs to be done in the interim is at least to look at some central location that could be rented to have a central courthouse facility with most of the services there until such time as an appropriate courthouse facility can be built. Is that an alternative to simply going in and waiting another six or eight years or whatever it takes to put a new courthouse in Hamilton?

Mr. Turnbull: It might be an alternative, but realistically, the cost of renting space and then accommodating it to a court facility on an interim basis would almost be prohibitively expensive because cells would have to be created, and accesses and so forth. I must say the government people we have dealt with in the past year have explained all these problems to us as best they can and have educated us about them to a certain extent. Financially, I do not think that type of interim solution would be responsible.

Mr. Philip: Essentially you are stuck with this, with some minor changes that could be made. Obviously, it does not take very much imagination to understand that you could have a communication system whereby if somebody is paged in one courthouse, he is also paged in the other. With some changes like that, you are basically condemned to this kind of system until a new centralized courthouse facility is built. Is that what you are saying?

Mr. Turnbull: Unfortunately, I fear that probably is the case.

Mr. Philip: You talked about a judge walking through a holding cell. The Provincial Auditor says this comment is not complete. Let me read you Mr. McAuliffe's accusation and the Provincial Auditor's comment; then perhaps you can elaborate or give us as accurate a picture or description--

1110

Mr. Turnbull: Excuse me, Mr. Philip; I am sorry to interrupt you. Just so that the Provincial Auditor understands, we have read the report as it applies to Hamilton and our comments are only directed at the Hamilton situation. We have those comments in front of us and we have the auditor's reply to them as well. That might assist you.

Mr. Philip: So you have read the auditor's report as it applies to Hamilton?

Mr. Turnbull: Absolutely, and that is exactly what my comments were directed to. I want to make that clear to the auditor.

Mr. Philip: And your comments were specific to the auditor's report, because you contradicted on a number of things in the auditor's report as being inaccurate.

Mr. Turnbull: Precisely.

Mr. Philip: Let me deal with this matter because you dealt with it in another way and I want to make sure that we understand exactly what your objection is.

Mr. McAuliffe says, and it is quoted on page 23, "It is only a matter of time before a judge is taken hostage or people are seriously hurt due to a lack of proper security. At 125 Main Street, the judge has to walk through the holding cell to get to his office from the courtroom." You have commented that this was the case, and you also said they even have to use the same elevators. Is that in the same courthouse, or is that a different one?

Mr. Zabel: That is a district court.

Mr. Philip: Okay. Let us just deal with 125 Main Street. The auditor says:

"This comment is not complete. At the provincial court located at 125 Main Street East, there are five courtrooms. The judges enter the courtrooms directly from their offices except for courtrooms 1 and 5. To enter courtroom 1, the judge is escorted through a secured corridor which passes a door leading to the cell area. We understand that prisoners and judges do not use the corridor at the same time."

Is that factual?

Mr. Zabel: That is not factual. In order for courtroom 1 to be accessed by the judge, the judge must walk down the same hall where prisoners are being held. It is the hall outside of the holding cells, and because of the overcrowding, many times prisoners are standing in the hall as the judge walks by. I personally have observed that on numerous occasions. The judge has no other way of getting into courtroom 1. In fact, until last year, even to get into courtroom 2, you had to walk down that corridor where the prisoners are mingling. For courtroom 5, the judge has to walk down a corridor past a holding cell.

Mr. Philip: Okay. "For courtroom 5," it says, "the judge must be escorted through the public area to enter the courtroom." The public area is essentially a holding area, is it not?

Mr. Zabel: No. The public area, I believe, is the main hall of the provincial courtroom. That is what is being referred to as the public area.

Mr. Philip: But there would be some prisoners there.

Mr. Zabel: There would be accused persons in the hall, lawyers, victims, etc.

Mr. Philip: Essentially, what you are saying is that the sheriff or whoever it was that the Provincial Auditor's staff talked to misinformed him on this matter.

Mr. Zabel: In that regard, the auditor told us he spoke to Mr. Flis. Mr. Flis, as I can see, is the only user that was contacted in regard to the

provincial court (criminal division). Mr. Flis is a court administrator, a provincial employee. Reno Violin is the sheriff for the district; he is located at the district court. Mr. McNeilly is in the unified family court. Vicky Hamilton, I think, is a clerk outside the provincial court. Barry Lowe is from legal aid. The only person he spoke to who could tell him anything about the provincial court was Mr. Flis, who is in charge of that court.

Mr. Philip: What you are saying is that Mr. McAuliffe was right and that the Provincial Auditor was misinformed, most probably by Mr. Flis.

Mr. Zabel: I do not know who misinformed him, but on the point we have just talked about, Mr. McAuliffe is right about the problems with the judge having access to his court and having to walk past prisoners.

Mr. Philip: Okay. I want to deal with the matter of the cells holding more than 40 prisoners. It says, "We were informed by the ministry that during the past year, there were only four occasions when there were more than 40 prisoners in the three cells combined." Is it a word game that the ministry is playing with us by using the words "three cells combined"? What exactly do the figures you have show?

Mr. Zabel: The figures we have show the number of people in custody at the provincial court (criminal division), which includes the two cells I have told you about, the two washrooms and a set of cells downstairs. That is all there is at the provincial court (criminal division).

Interjection: They show daily figures.

Mr. Zabel: They show daily figures and the total for the day. We have them for November and January. As Mr. Turnbull has told you, on many occasions there have been more than 40 prisoners in those cells. I do not have the figures before November, but I can tell you from personal experience--I have gone there; I am there on almost a daily basis--it is always overcrowded.

Mr. Philip: I accept your anecdotal information. I am not disputing it, because I have no way of disputing it; you are there in the court on a regular basis and I am not. From your own figures, though, the figures you are giving us, I want to understand exactly what they are going to show. Those would be daily totals. Would it not be true that a lot of these people would be in and out of those cells depending on what is going on in the courtroom?

Mr. Zabel: The way it works is that they are all brought in between 9:30 and 10 in the morning, and usually the earliest they leave would be around 11 when they start transferring some people back to the jail. For an hour and a half, you have these people there and no one gets out.

Mr. Philip: For at least one hour and a half, those figures you have given us would be accurate figures as to how many people would be crammed into those cells.

Mr. Zabel: At least an hour and a half, perhaps longer.

Mr. Philip: So it is possible, if the auditor or somebody like that visited later in the day, there might be fewer people.

Mr. Zabel: Or if you visited in the afternoon; there might be no one there later in the afternoon.

Mr. Philip: It says: "On the day we visited the courthouse, there were approximately 10 prisoners located in the largest cell which can hold 14. There were no prisoners in the other two cells which are designed to hold five each." May I ask the Provincial Auditor's staff when the visit took place?

Mr. Mishchenko: It was on a Monday morning.

Mr. Philip: At what time?

Mr. Mishchenko: I think it was around 10 a.m. It was September 8, 1986.

Mr. Philip: What you are saying is that they probably happened to visit on a day when there was not a large number there, but according to your figures, they happen to be wrong if they conclude from that one experience that they are not overcrowded.

Mr. Zabel: That is correct.

Mr. Gillies: Could I ask a brief supplementary? In most courts, would it not be the case that the court docket is heavier on certain days of the week than others depending on the judges' schedules and so on?

Mr. Zabel: Normally, the remand court, which is usually courtroom 2, is heavy every day. But some of the trial courts could be heavier on some days than on other days; that is true.

Mr. Gillies: So it may be that Mondays are generally not as congested as another day of the week.

Mr. Zabel: It is possible. I would think Monday generally is more congested because you have the weekend traffic coming through. My experience is that Monday is more congested because of people being arrested over the weekend, not being released and being held in custody until Monday.

Mr. Philip: I want to ask one last question, and if there is time, I will go back on the list. It has to do with the comment "There is only one secretary for eight judges who handle a total of 50,000 cases a year, and her desk is far from where the judges sit."

The auditor's report states: "The work load is considerably overstated. We verified that there was only one secretary for eight judges. We understand that the provincial court services branch considers this arrangement to be adequate." Then the rationalization: "Although court administration staff is available to assist the secretary when work accumulates, the need for such assistance has been minimal."

Would you agree or disagree with that statement?

Mr. Zabel: I can tell you that there is one secretary in one building on the first floor for eight judges, six judges being upstairs in that building and two judges being at Hunter Street. I can also tell you that the judges feel it is totally inadequate, and they are the users of that secretary.

Mr. Wildman: Two of the judges who are supposedly not close to where the secretary is are actually down the street?

Mr. Zabel: That is right; they are two and a half blocks away.

Mr. Philip: My last question to the auditor is, did your staff talk to the secretary who serves those eight judges or to any of those eight judges when you made your report?

Mr. Mishchenko: We spoke to the court administrator with respect to this. We also spoke to the Ministry of the Attorney General's staff as to what their normal statistics are for the number of secretaries to service judges. If we asked the secretary, I am sure she might say she is overworked, but we would not be able to prove whether that was true or not. Again, that would be basically her comments or the judges' comments, which could tend to be biased.

Mr. Philip: I was pleasantly surprised when I visited one of the courts with Mr. McAuliffe where the judges were quite happy to talk to us. You might have talked to one of the judges; I am sure they would have been pleased to talk to you.

1120

Mr. Ferraro: First, I want to clarify something which Mr. Turnbull was not too sure on, and I say that just for the point of correcting the record. I think you said you thought the funding for the space and so forth was under the auspices of the Attorney General's office. My understanding is that the funding is provided out of the budget of MGS.

Mr. Turnbull: Thank you.

Mr. Ferraro: That is quite a minor point.

I do not want to spend too much time talking about your allegations and, I guess, frustration about what you view as an inadequate report from the auditor vis-à-vis the situation in Hamilton. I am sure that much of what you said from your perspective is quite true.

In fairness to the auditor--I personally do not have an problem with the verbiage he used, "substantially correct"--and based on the witnesses he interviewed, no other motive can be attributed other than the fact that the auditor and his staff report out of good faith what they hear from the people they interview. I suggest that part and parcel of why you are here is to add to that. I am sure there are time constraints and all the rest of it. In fairness, I am not disputing what you say.

I will just add as well that I am not sure what good would come out of going back to 1982 and finding out that \$400,000 was misspent or wasted. Suffice it to say it is one of the things we all have to live with, past sins. In fairness--and I do not mean to be partisan--I am sure the present administration will make mistakes too.

Mr. Turnbull: Absolutely.

Mr. Ferraro: Having said all that, much of your criticism--you touched on it particularly, Mr. Turnbull, as did Mr. Zabel--is based on conditions that in your view and in the view of the judges are totally inadequate.

The concerns about security are definite ones we have to look at not only from the aspect of the judges and the court officials but from that of

the general public as well. The inadequacies are not necessarily unique to the judicial system. Let us draw the analogy of the room and building we are presently in. You talk about security systems. Bearing in mind the unfortunate incidents that occurred in legislatures in other jurisdictions with some individual running rampant and shooting and so forth, for me personally it makes no sense that I can walk into this House, this chamber, and do anything I want. Yes, there is a guard at the door, but there is no security system to detect if there are any guns or anything. The security system to detect if there are any guns is up around the doorway when you want to go in to sit in the balcony. The obvious conclusion is that you cannot shoot any of the members of the House from the gallery, but when they are walking to get into any other office or room, it is okay. I suggest the inadequacies are not unique to the judicial system.

Mr. Gillies: It is generally in this committee that they would want to shoot us.

Mr. Ferraro: That is an understatement.

Mr. Epp: The other thing is that this is regarded as the highest court of the province.

Mr. Ferraro: I want to reiterate--you may not have had the opportunity to hear this yet, gentlemen--and get a comment. This is from the comments yesterday of the Deputy Attorney General, Mr. Chaloner. I will read one paragraph to you, notwithstanding a lot of other things the ministries are doing.

"In addition to the development of a province-wide strategic plan and collection of data and comments from the regions, the Ministry of the Attorney General has also commissioned the Ontario courts inquiry. Mr. Justice Zuber will review the jurisdiction, structure, organization, sittings, case scheduling and work load of all Ontario courts. The inquiry will make recommendations concerning the provision of a simpler, faster, more convenient and less costly court system."

The general point I want to have you address--and this is the only question I have--is yes, there are inadequacies; yes, you are frustrated, and understandably so. I am sure every group of lawyers in every community we go to is going to say there are inadequacies. But in fairness, first, it did not happen overnight, and second, I think you have to admit, as you have to some degree, that the new government in its short tenure--possibly not quickly enough--has taken admirable steps to rectify the problem.

Mr. Philip: Right after all the publicity.

Mr. Turnbull: In reply to your points, first, the reason we came here was not to criticize the auditor. Far from it. The reason we came here was to assist this committee so it would understand that while general statements that there is no evidence of neglect across the province may be substantiated by other examinations, in Hamilton they are not applicable.

Second, we recognize the inadequacies are province-wide. I am in courts across this whole province and I know they are province-wide. I know the problems. I know about Mr. Lortie in Quebec. I followed that in the case reports with great accuracy. To suggest that we should not properly come and express those concerns in public--

Mr. Ferraro: I did not say that.

Mr. Turnbull: But to imply that the problems are everywhere and therefore we should not raise them--and I do not think you were going to say that--I am not so sure that is proper. I think as part of a consideration of court facilities, it is a necessary comment. I know the problem is everywhere and I do not like it.

Mr. Ferraro: Let me interject. If that was the implication I gave, it was the wrong one.

Mr. Turnbull: Okay, fair ball.

Third, I understand there is an Ontario courts inquiry going on. We will hear from Mr. Justice Zuber in due course. As he is undertaking the Ontario courts inquiry, I rather suspect and I know, having been instrumental in a report submitted to him by the Hamilton Law Association, that very frankly court facilities are not going to be a major consideration. His major consideration is going to be the administration of justice, the development of the courts, the hierarchy of the courts, the ways of appointing judges, how to expedite the process and make it fairer and more efficient. Courthouses are courthouses, they are going to have to be there and that is what we are dealing with here.

Mr. Ferraro: Does the Law Society of Upper Canada do anything as a society to rectify the problems you are talking about?

Mr. Turnbull: It is not the law society. With respect, I do not think it is that much within its ambit. The society is primarily concerned with protecting the public and monitoring the profession as opposed to administering courthouses. I do not believe the law society per se has a mandate.

Mr. Ferraro: In the orderly course of justice and in the performance of your duties, whatever they may be--I say that respectfully, civil as opposed to criminal and so forth, not in any other connotation--I think the society would definitely be concerned if its members were prohibited from doing the job that it deemed its members should do, so in that regard would it not have an interest?

Mr. Turnbull: I think it has a vicarious interest, but the law society, in my view, has its hands full already handling its many administrative problems. That is why user groups such as ours are having to step forward and say: "There are problems here. Be aware of them."

The fourth point was simply that the problem did not occur overnight. Absolutely. We recognize that. But unless it is emphasized and highlighted in reports like this and unless you put it in writing to people in the bureaucracy, then people's attention is not directed to it.

For instance, as you understand better than I, to get the matter within the political process so that somebody within a ministry will understand that there is an impetus there and something needs to be done, what has to be done is to prepare a report in writing like this so that people such as yourselves, elected representatives, can take a look and say: "There are problems here. Let us direct attention to it."

I am not trying to take a swing at the government of the day, far from it. I must say that since Mr. McAuliffe's report and since we prepared this

brief and submitted it to this committee, the people within the Ministry of the Attorney General and the Ministry of Government Services have been very responsive in attempting to correct the problems. We know they are not going to be corrected overnight. Far from it. We understand there is not the money and you have to prioritize things. We understand there are problems across the province, but it is very clear, if you care about a problem, you have to take the time to prepare reports like this, come before committees like this and take the time to speak to elected representatives to keep that problem on the burner. You and I know--

Mr. Ferraro: The squeaky wheel.

Mr. Turnbull: The squeaky wheel, yes.

1130

Mr. Zabel: The only reason we mentioned the \$400,000 waste--and we realize it is over and done with--is so that something can be done so it does not happen again. What is encouraging is the consultation going on now between local users and ministry officials. That is probably the first step to ensure this does not happen, because hopefully they will consult us in the future before they do something like this.

Mr. Ferraro: Just by way of comment--and I have had some experience in dealing with the legal profession in my municipality--it appears that local associations are becoming much more active and vocal.

Mr. Turnbull: Of course they are.

Mr. Ferraro: That is probably true of the general public, which is good.

Mr. Zabel: Yes. What is important about our report is that it is not just the local lawyers talking to you. We are lawyers, but we are speaking on behalf of all the users. If you look at our appendix, there are 14 user groups, two of them are lawyers and the rest are judges, police, etc. We are all working together. That should indicate to you how serious the problem is, that we all got together and put this report together.

Mr. Barlow: I apologize for being late. I have a couple of questions and I hope they have not been covered up to this point.

In the auditor's report, on page 23, it refers to the cells at the courtroom facilities that were built for eight people and often hold more than 40. The auditor says that on four occasions there were that many people in there. Can you just describe the whole picture of the courtroom facility there, when it gets crowded like that and how often it is crowded in that area?

Mr. Turnbull: In a nutshell, there are three cells available for the police to house prisoners. The categories of prisoners that the police have to try to monitor are as follows: Male prisoners in custody; female prisoners in custody; segregated male prisoners in custody, in other words dangerous offenders or persons who may have something which may cause them to be in particular danger from the other persons in custody. So you have male and female categories there. You then have youthful offenders, male and female. You may have segregated youthful offenders, male and female. Then, probably falling within the segregated aspect, you have persons--and I do not say this in a disparaging sense--who may have a sexual proclivity that might offend

other persons who are in custody. On top of that, you may have fights breaking out while those individuals are in custody and therefore you have to again segregate people who are causing trouble. You have three cells and the officers have to deal with that.

I believe before you arrived, I indicated that unfortunately some of these people had to be housed, at the time of Mr. McAuliffe's report, in toilet facilities, sitting on the floor beside toilets, confined to washrooms, before being taken into the courtroom.

Mr. Barlow: In order to keep them segregated from other classes of people?

Mr. Turnbull: That is right. That is the extent to which those facilities have been neglected in Hamilton.

Mr. Barlow: Is this pretty well every day, the same sort of situation?

Mr. Turnbull: Yes, very regular.

Mr. Barlow: Obviously, it is worse on some days than others because of heavier case loads.

Mr. Turnbull: Yes.

Mr. Zabel: The offenders in protective custody include sexual offenders, informers and also mentally disturbed individuals. What is very sad is to see the mentally disturbed individuals being housed in a washroom. That is where they have to put them to keep them away from the rest of the population. It almost reminds me of the insane asylums of the 1800s when you see two or three of them in this crowded washroom. If one person has to relieve himself, he has no privacy because the other two people are watching.

Mr. Barlow: The report points out an incident where Judge Zuraw was roughed up one day. Was this just a one-time incident or is this an ongoing concern?

Mr. Turnbull: It is interesting. I happened to be in the courtroom next to that when that incident occurred. I can tell you that the judges of the provincial court have asked the ministry constantly since that building was constructed to do something--it could very easily have been done--just to change the entrance to the prisoners' dock. Instead of doing that, somebody from the ministry put a piece of glass around the prisoners' box so that the prisoner, when sitting in there, would be barricaded in by a piece of glass, but the exit was not changed. The reason this incident occurred was that somebody in the government, instead of listening to the recommendation, went ahead and acted unilaterally.

Interestingly enough, those prisoners sit there in a glass cage, something like a fishbowl, it is hard to hear the testimony, and the problem still exists. As we are sitting here right now, somebody on his way out could take another run at a judge if he wanted to.

Mr. Barlow: I see by the report that it is going to be a priority item for renovations to correct that situation. Is it a major construction job to correct that situation?

Mr. Turnbull: We just did some renovations in my office and I could have the contractor do it for \$200.

Mr. Chairman: Before we go to Mr. Wildman, I have one brief question about one of your earlier comments, that being part of the system you were more or less immune to what was going on around you as well. I know there has been some criticism of what has or has not transpired in the past in response to these problems that Mr. McAuliffe brought to all of our attention. Do you think that is a common occurrence right across the province or has it been in the past, where you are working in this system as a professional and you simply accept what is around you and do not recognize many of the deficiencies?

Mr. Turnbull: I think it is. I think with the business of our lives, you sort of get used to what is there. Unless it directly affects you or somebody specifically draws your attention to a problem, I think sometimes you tend to overlook it. I am not proud of that. I say that quite unabashedly. It might even be fair to say that members of this committee could say, "Mr. Turnbull, why have you and the Hamilton Law Association not spoken up before now?" We bear some responsibility for that. There is no question about it.

I think it is an occupational hazard. We are all so busy handling the problems in our respective professions that we sometimes overlook them. Hopefully, the bottom line that might come out of this is that within the Ministry of the Attorney General this type of deterioration which has taken place over 20 years, before all of our eyes, will not take place again and we will have a better watchdog system to make sure it does not occur.

Mr. Wildman: Along the same line, I am concerned about the overall effect of this kind of physical situation on the administration of justice. Can you explain what effects this kind of atmosphere have on the morale of the people in the system and what effect, if any, that may have on the administration of justice?

Mr. Turnbull: I think you have to address that in three ways. I can speak on behalf of the Hamilton-Wentworth regional police and the conditions the officers have been placed to work in, in the holding cell area and in the court branch offices. It is really very unfortunate. It adversely affects the morale of the officers in dealing and working in crowded conditions. I think all of us in a commonsense way can say if the morale or the esprit de corps in the place where we are working is not good, if there is not a sense that things are being done properly over a period of time, there is no question about it, it affects the officers in the performance of their duties. If they were here today, they would agree with that.

Second, for an individual coming into the system--and I have seen it in the sense of representing them--it is very difficult to explain to a person, when you are sitting on a toilet and he is sitting on the floor next to you and you are about to go into court to represent him, that he is going to get a fair hearing, that the system is accommodating and handling him. It is difficult to explain to a person, when there are 40 or 50 cases on the docket, that the judge is going to remember him as other than something fleeting and being processed as quickly as possible. That is a real deficiency in the system.

From the police point of view, from the accused's point of view and from the public's point of view, witnesses who are called to court, people who may have been assaulted, who have had shoplifting offences against their property, and so forth, the perception of the public has to be one of indignation and

disbelief, because not only are the waiting areas outside the courtrooms smoke-filled and crowded, with obscene language and improper security and so forth, when you go into the courtroom itself, the courtrooms are crowded. As Mr. Zabel said, it is as if everybody is a number and you are pushed through the system.

The difference between the district court and the Supreme Court, as a counsel, as somebody who appears in those courts representing a person, the difference in the hearing that is given to that individual is as different as night and day; not because the judges in our provincial court are not capable of giving a good hearing, but just due to the extreme numbers imposed upon them and the circumstances of where they are working. It is very debilitating as far as the public is concerned in its perception of the administration of justice. Unfortunately, I know it is not something we are going to correct overnight, but it is something we should gradually work towards.

1140

Mr. Wildman: I am very concerned about that in relation not only to the users that you specifically mentioned, the police officers who obviously are directly involved and how they may interact with each other and with the prisoners, and certainly defence counsel and the accused people they are representing and the witnesses and the general public, but also the crown and the judges. I do not expect you to answer this question. As a layman, I am speculating that this may or may not have some effect on how a judge responds to what he hears before him.

Mr. Turnbull: The practical difficulty is--and I do not think it is any secret because, as you will see in our user report, the provincial court judges in the criminal division have added their comments and supported what has been said--when you have two judges at one court location and the other five at another one, and there may be a new case that has come down to be discussed, or there may be a difficult sentencing question. It may be that they want to have an opportunity to discuss that. When a judge is at another location and needs library books so that on a motion perhaps made in the middle of a trial they are able to give not only an articulate but legally accurate reply to the motion made, when that type of information is not available to them because of the shortcomings of the physical layout, and when they walk through the cell and see people sitting in smoke-filled corridors or in toilets and then that individual is brought before them, it cannot help but affect them.

Mr. Wildman: I am just wondering what it must be like for a judge who has gone through a whole of this.

Mr. Turnbull: It is exhausting.

Mr. Wildman: By the end of the week, he is exhausted. I do not think I would want to be the last case he hears, frankly.

Mr. Turnbull: A friend of mine was recently appointed to the provincial court (criminal division)--not in Hamilton--and I said to him that I really did not envy him at all because the responsibilities those judges have to carry in that court and the case loads they are facing are really not suitable.

Mr. Wildman: My colleague wants a supplementary.

Mr. Philip: Along the same line, I can recall teaching in one lecture hall and finding that the students' reaction to one another and my reaction to them was being affected by the environment. I suspected it might have had a psychological effect on how I might mark them or view them. I was quick enough to get a brighter room with at least some windows and a nice environment, and the whole atmosphere changed.

I am wondering what effect an environment has on a judge's psyche, if you want, or mental disposition, and whether that affects how he views the plaintiff. In other words, if I am working in a nice environment, I tend to be perhaps more optimistic about life. It does have an effect on people. They have even done psychological studies showing that the amount of light in a room can affect one's disposition. Maybe that is why there are more suicides in the darker parts of the year than in the summer months and things like that. I am wondering if it affects the severity or the decision-making of the judges if they are in this kind of environment; not just the work load and so forth, but the physical plant.

Mr. Turnbull: I hope not, but I can advise you that in one of the courtrooms at 140 Hunter Street, physical layout is so poor and the dais is so high relative to the lights overhead that the judge has to turn the lights out in the front part of the courtroom where he sits and use a little lamp because he gets such severe headaches from the overhead lights.

When you appear in that court representing somebody, the client is sitting in this fish tank to the side in semi-darkness. I, at counsel table, am working in semi-darkness. The judge is sitting there at the front under this little spotlight on his desk. The witness is testifying in semi-darkness and the rest of the courtroom has lights on.

Those types of conditions simply are not conducive to people doing the best they can at their given job; I do not care what the job is. I do not think there is any question--I am not a judge in that court, but I have no doubt the facilities are affecting the attitude and the willingness of the judges to be able to carry out their responsibilities, not because they are not responsible, capable people but because they are human beings.

Mr. Zabel: It is physically taxing on the judges to work in those facilities, as well as on the crown attorney, who is also there all day, the security guards and so on.

Mr. Wildman: Obviously, as we have all said, this did not happen overnight; there has been a long period of problems, 20 years or so. I appreciate your coming before us to explain this and to give us some specific examples of the problems. I think, though, it is incumbent on all of us to look at how we can avoid this happening in the future and rectify this situation as quickly as possible. We all recognize there is a finite amount of money available.

If there were a decision today by government to build new centralized courtroom facilities in Hamilton, it would probably be two to three years before that facility were available for use. I hope that kind of thinking is being followed in the ministry. But I am concerned about your suggestion that you are not on a five-year plan but rather it looks like eight to 10 years. Do you have any idea where your situation is in regard to the priorities of the ministry across the province?

Mr. Turnbull: We were advised by the representatives of the Ministry

of the Attorney General at a meeting on March 24, just two or three days ago, that on a priority list, Hamilton is number 6 in the province. We do not know the basis upon which that priority has been established.

Mr. Wildman: You do not know what the top five are.

Mr. Turnbull: No.

Mr. Wildman: So we can only infer that the situation in those other five communities is worse than in Hamilton.

Mr. Turnbull: That is right. That is the information that is apparently perceived by the government and by the ministry as being the situation. We respect that decision in the sense that we recognize ultimate decisions are to be made by elected governments and elected representatives. The only concern I have with respect to that, and we are going to continue lobbying about it, is that in the criminal court facility considerations, Hamilton handles the fourth highest number of cases in the province; the case load is the fourth highest. I believe that ahead of us are Metropolitan Toronto, of course, then Brampton and Peel and Ottawa-Carleton.

The thing that strikes me, and we will be making submissions to the ministry, is that if you have us as number 6 and there are areas where fewer people are being handled within the system, perhaps some readjustment should be made in that area.

Mr. Wildman: I understand your argument, but coming from the north where we have fewer people but we may have serious problems, I am not that sure it should be solely on the basis of the number of cases,

Mr. Turnbull: I do not think it should be either.

Mr. Ferraro: You said you are sixth. Does that mean you are sixth on the list with no relevance as to the chronological culmination?

Mr. Turnbull: The information we have is that it would be eight to 10 years at the earliest before we could hope for correction of these problems.

Mr. Ferraro: I just wanted to put that in context with the numbers.

Mr. Zabel: If I may interrupt, I can indicate who is ahead of us. This is the material received from the ministry. The Toronto justice complex is first. St. Thomas is second. Cayuga is third. Windsor is fourth. Brampton is fifth and Hamilton is sixth.

Mr. Wildman: I see.

I want to comment briefly on a situation you have described a number of times, people being held in washroom facilities and having to interview people in those kinds of facilities as well as in the hall. Yesterday we heard testimony about the provincial jail at L'Orignal in eastern Ontario, near Ottawa; we had evidence, confirmed by the Provincial Auditor, of prisoners being held in cells that were three feet across and seven feet long, cells with buckets. Obviously, there are serious problems in other parts of the province. Those kinds of conditions are medieval in my view; so even though they may not have a lot of cases, those kinds of conditions, coming out of another budget, in this case, the Ministry of Correctional Services, have to be rectified.

Having said that, am I correct in my understanding of your position that while you recognize there are problems elsewhere, because of the number of cases, the problems and the need in Hamilton, you believe that if you are number 6 on the priority list, that priority list should be dealt with more quickly than in eight to 10 years?

1150

Mr. Turnbull: Precisely. In other words, in the capital allocations given to the Ministry of Government Services or the Ministry of the Attorney General for improvement of court facilities, a greater allocation should be given from the Ontario budget not just for Hamilton but in recognition of this province-wide problem.

We are reserving our comments so as not to disagree with the auditor in other areas we are not familiar with, but presumably if a greater allocation in the budget is given on an annual basis over the next five years to be able to correct these problems, instead of having to wait eight to 10 years, what we are able to say to all the people in the Hamilton area is that maybe we are were waiting five or six years.

Mr. Wildman: I have one question for the auditor, and then I would like to make one short comment.

In answer to the criticisms that were made earlier about who was interviewed in regard to the confirmation of Mr. McAuliffe's findings with regard to Hamilton, you or your staff indicated that you did not ask the secretaries and the judges because they might be biased. That was my understanding of the comment. Would you not also agree that when you ask the official responsible for the administration of the criminal court and the physical layout and operation of that court, that official himself might also be biased?

Mr. Mishchenko: The situation is a little different in that the committee had the opportunity to ask individuals representing the Ministry of the Attorney General and the Ministry of Government Services specifically whether these explanations or answers that were provided to us were accurate, and if action was not being taken, why action was not being taken.

By interviewing people, all you are doing is basically the same thing Mr. McAuliffe has done: providing a list of concerns of individuals. What we were trying to do was go in, do an independent assessment based on our judgement and, where necessary, talking to the people there. But I thought the committee had the opportunity to ask specific questions of representatives of both ministries as to why certain situations exist. We were just going out to confirm whether those concerns were valid and whether those concerns were accurate.

Mr. Wildman: My problem with that--and it has been argued about over the last couple of days--is whether more users of the system should have been interviewed in terms of determining whether the problems were as Mr. McAuliffe had indicated in his report. It seems to me, if you interview members of the ministry to get their views as to whether these situations are existent, and if they are, whether they are as serious as indicated in the reports or whether they are not as serious, that is quite legitimate. But it seems to me you also have to ask the users to find out whether the information you get from the administrators is accurate in their view. If you want to be independent, as I know you do, obviously you should try to get opinions from people as disparate as possible.

Mr. Mishchenko: Maybe we were not using the people in the ministries to the extent you are referring to. We were not getting them to provide us with an assessment and then just including that in the report. We were asked to review Mr. McAuliffe's concerns and report to the committee. It was supposed to be a review by us, not by somebody else, so we went and visited these facilities. The staff of the Ministry of Government Services or the Ministry of the Attorney General was basically to direct us to the locations Mr. McAuliffe was referring to. We were making our own assessments based on our opinions, and providing details to the committee in any case where the ministry had either agreed to take corrective action, explaining that that was the case, or if it was not going to do anything to correct the problem, explaining why not, and then giving the committee the opportunity to deal with our report with the witnesses who appear in front of it.

Mr. Wildman: I understand that. It struck me as rather strange when in your report you used the example of the secretary for the eight judges and the comment was made that it was not that unusual in terms of the proportion of judges to secretaries and that it was true that the secretary was not close to where the judges are seated. Do you think you received full enough information when you now find that two of those judges included in the eight are actually two and a half blocks away? Do you think you received adequate information in order to be able to make an assessment yourself?

Mr. Mishchenko: Again, we just tried to provide as best we could the facts in that situation. One of our concerns was that 50,000 cases was the figure that was thrown out as the work load of that particular secretary, and we found it was only 17,000 cases.

Mr. Philip: May I ask a supplementary?

Mr. Chairman: That will use up your time.

Mr. Wildman: In that case, I do not want him to ask a supplementary. I have one other thing I want to say.

There were comments raised about the security of this place in comparison to the judicial facilities. I want to say--and I am sure many members would agree with me--that while we have to be concerned about security in the Legislative Building, of members and of the people who work in this building, if we are to remain an open democracy, we also have to try to maintain as much as possible an easy access by the general public to the people who are elected to represent them. Obviously, those are two very different problems and they are difficult to balance against one another, but I certainly would not want to be in a situation where people who wanted to visit me were searched or had to go through a metal detector before they came into my office.

Mr. Philip: There are still 30 seconds. May I have my supplementary?

Mr. Chairman: No. Mr. Epp.

Mr. Epp: Mr. Chairman--

Mr. Philip: I preferred my supplementary.

Mr. Epp: I just want to say a couple of things. First, I think some of this discussion has not focused on the things that were originally intended to be focused on, and that is on the accuracy of the Provincial Auditor's

report. I think the auditor has carried out the report to the best of his ability and to the best of the directions that were given to him and his staff.

I think the inadequacy is by this committee in drawing out the terms of reference under which he should look at Mr. McAuliffe's report. Mr. McAuliffe has performed a tremendous public service in the problems that he has brought forth. I am surprised that it took Mr. McAuliffe and the CBC to bring them forth and not the thousands of lawyers and staff people we have out there who could have drawn those problems to our attention. I have been here for 10 years and this is the first time I have been told about the inadequate facilities that we have in the courts of Ontario.

Mr. Wildman: Oh, come on, Herb. I have been here for 12 years too, and there have been questions in the Legislature about courthouses across the province.

Mr. Epp: It has been very, very minor. I think the problem has been that the people concerned, as Mr. Turnbull said, may have been almost immune to these because they have been involved and accepted them as being there as opposed to saying: "Look, we do have problems. How do we correct them?" These problems have been thrust on the new government and on the people of Ontario and the solutions are not going to be easy. It is going to mean hundreds of millions of dollars, maybe in the billions, in order to resolve those problems. The courthouse in Ottawa alone cost \$50 million or close to it. It means not only the capital cost but also the operational costs because once you add more secretaries, more staff, more judges, etc., in order to have more efficient and probably better decisions from the judges. Without trying to being critical of past decisions, there are improvements that should be made and will be made, I am sure.

1200

I want to get some clarification. Mr. Turnbull mentioned the prisoners and the judges using the same elevator. Again, we get to the point: Does this mean they use the same elevator at the same time or that the same elevator is used by the judges and by the prisoners at different times? I am not sure what the answer is. There can be two different impressions. Similarly, the impression was left that somebody who had been raped and the accused person were in the same room without anybody else being there. As it turned out, a policeman was there with the two.

Mr. Wildman: It is totally inadequate whether there are two or three cops there.

Mr. Philip: McAuliffe never said that; that was not his report.

Mr. Epp: I did not say he said it. I said the impression was left. I am just saying this needs to be clarified. Are you saying, Mr. Turnbull, that the judges and the prisoners are using the elevator at the same time or that they are using the same elevator at separate times?

Mr. Turnbull: In the facility where that elevator is located, no prisoner has ever used the cells. So far, only the judges have had to use it.

Mr. Wildman: The lawyers use the cells for their offices or for their interviews.

Mr. Turnbull: That is the problem. The reason we use it is that it

is an example of the very poor planning, without consultation, that has taken place in the past. To elaborate a wee bit, the ministry people brought over proposed plans on the revisions presently under way with respect to 125 Main Street East. In many ways, our user committee was not happy with them, but even though we are not happy with an eight-year to 10-year interim solution and we are going to continue working to make it a shorter period, at least now the ministry people have put the plans before us and we have been able to make a number of significant improvements to the plans which in the long term are going to improve a lot of the problems.

The point is that the elevator situation would never have occurred if the people who were going to be using it, the judges, the bar, the prisoners, the police and so forth, had seen the plans before they were drawn and approved them. That is all.

Mr. Zabel: Mr. Epp, on your second point, what we meant to tell this committee was that in the Hamilton provincial court, in the main courthouse, there is a big hall outside of the courtrooms where everyone crowds around. What happens there is that a victim, say, of a sexual assault, will be standing or sitting in one of the few chairs in the hall, and she could be sitting right next to an accused person who is waiting to go into court. They are not segregated at all.

At the Hunter Street court, in the waiting area, we have a series of three rows of four chairs in each row, back to back, where the people for the criminal court, accused and victims, and the people for the small claims court all sit together in one little area. Police officers could be standing around there waiting to be called as well, but they are not sitting with the victim.

Mr. Epp: I am really surprised; the same kinds of problems you are mentioning here must exist in other areas of the province, and yet they have not been brought forth with the same intensity and so forth as you are trying to bring them forth today. I commend you for it. I am not being critical. I am just saying, where have you been?

Mr. Turnbull: I can tell you. In 1975, we had an assurance from the Attorney General at that time in the province--we have in the Hamilton Law Association correspondence--that a centralized facility would be established in Hamilton in 10 years. We never heard from that Attorney General again. We had continuing problems dealing with the prior administration in Hamilton. We could not find out what was going on in the courts in Hamilton. I do not know what political party you are from, but I can say, very frankly, that since we had a change of government--maybe it is a minority situation that has created it--

Mr. Philip: That is what has created it.

Mr. Turnbull: I do not know what it is, but I can tell you that the co-operation we are now getting from ministry people and the ear we are getting from government people in all parties is night and day compared to what existed.

Mr. Ferraro: I think we should give you your QC back.

Mr. Turnbull: No, thank you.

Mr. Philip: Even better, bring in another change in government. We will treat you well when we are in government.

Mr. Epp: Mr. Turnbull, you mentioned you have travelled across the province and you have been in various courthouses. You also know that some of the court space is owned by the province and some of it is leased by the province. Have you found any particular denominator or clear line where the facilities in space we own are better as opposed to facilities in space we lease or vice versa? Is there no clear indication of which route we should go?

Mr. Turnbull: In fairness, I would not really know where they have been owned and where they have been leased. Nevertheless, there is a great disparity in the court facilities from one area to another in this province. London is a prime example where a nice, large, centralized, magnificent court facility exists and it has about half the case load that would exist in the Hamilton-Wentworth area. Ottawa, which has a significant case load, has a fine court facility. Interestingly enough, a place like Milton, which is a county seat in Halton, has everything centralized, and I would venture to say, without having seen the statistics, that if it has a quarter of the case load of the Hamilton courts, I would be surprised. I do not understand the discrepancies.

Mr. Epp: One of the concerns I have is that Mr. Justice Zuber has been asked to look at courthouses. As was indicated this morning, after the auditor's report and knowing that Mr. Justice Zuber was looking at various functions of the courts, etc., my feeling was that one of his major functions would be to look at the inadequate facilities. It has now been drawn to our attention that this is probably not the case. Without this committee waiting to draft its report, I would be prepared to put forth a motion today to ask the government to have Mr. Justice Zuber examine, as one of his important criteria, the adequacy of the facilities in the province.

Mr. Ferraro: It is already part of the mandate.

Mr. Epp: That should be a major emphasis of that report, because if that is not the case, as was pointed out today, then this committee should take a serious look at that.

Mr. Chairman: Maybe we can clarify that. If need be, we can deal with the motion this afternoon.

Mr. Epp: Okay.

Mr. D. W. Smith: I guess I want to direct this question to Mr. Turnbull. Somewhere in your presentation you made the statement that you had been around the Hamilton courthouse as counsel for about 15 years. You have seen a lot of things happen there. In the information you have been able to find out, have any inspections ever been done by the staff of the Ministry of the Solicitor General, the Ministry of the Attorney General or the Ministry of Government Services over those years? Do you feel some laxity has been shown by the staff of those ministries in taking care of these facilities?

As I listened to your presentation, I almost thought some of the criminals or could-be criminals have suffered some of their penalties in waiting to be heard in court. That is the presentation that I heard. It was so graphic. Were you able to find out whether inspections were made by the staffs of these ministries in your 15 years?

Mr. Turnbull: Yes, there are inspections from time to time. You will see in our report that we have some of the public inspection panel reports for 1982, 1983, 1984 and so forth to give you the idea that the complaints being

made in our report are not novel. They have been there over an extended period of time.

I suppose the bottom line is that while I personally do not know whether these ministries from, say, 1975 forward have been critically reviewing the facilities on an annual basis and updating them to be able to handle the expanded programs and the expanded number of cases, if that is what government employees are being paid to do, I hope this committee and other members of the Legislature will make certain in the future that it is done. As we have said, in our opinion, it has not been done. There is clear evidence of neglect in that, and that is why we are in the situation we are in today.

Mr. D. W. Smith: If you are not sure about all the staff making visits and inspections there, have you ever known of a committee of elected people making tours through your facility in Hamilton at any time?

Mr. Turnbull: From my personal knowledge, people have made tours during the time I have been president of the Hamilton Law Association. When the problem surfaced, as I indicated, the Minister of Citizenship and Culture (Ms. Munro) immediately responded and toured the facilities, and thereafter three members of the Legislature, the member for Hamilton East (Mr. Mackenzie) the member for Hamilton Mountain (Mr. Charlton) and the member for Hamilton West (Mr. Allen), together with Ms. Munro, toured the facilities, and they expressed concerns and supported us in making these submissions to this committee.

The Attorney General (Mr. Scott) came over in response to our concerns and met with us. When he explained the overwhelming problem he was facing as a minister, I must say our association accepted the enormity of the problem. I do not think anybody can say he did not inherit the problem. What is encouraging from a nonpolitical point of view, if a priority list of one, two, three, four, five, six and so on is created, at least we know it is not going to be based on whatever political cabinet minister you have from a given area who moves you up the list.

I must say candidly that there had been a real cynicism in Hamilton up until the change of government that because we never had a cabinet minister from Hamilton, we never got any proper court facilities. Unfortunately, that is a candid recognition. I want to emphasize that I think, regardless of the political suasion, this committee should make certain that the Attorney General carries through as he promised. Court facilities should be addressed on the basis of need, not political expediency. That is what he has told us will be done. I see him doing that, so I accept that.

Mr. D. W. Smith: When you talk about this priority list that the ministry has, is this for a brand-new facility that will accommodate all the offices and accommodations that the legal profession would like to see in one building? Is this what we are talking about here?

Mr. Turnbull: Yes.

Mr. D. W. Smith: Mr. Epp was talking about this, and I guess I would address this to the rest of the members of the committee and the chairman. Before we make any final decisions, I think it might be wise if the committee toured the 10 courthouses on the priority list. We would have a better understanding of what is going on in the real world out there and possibly could push for the ones that we as a committee feel need to be prioritized higher on the list. I think it would be wise for the members of this committee to look into this ourselves.

Mr. Philip: I want to pick up on Mr. Epp's comment. I think it is a worthwhile comment. I hope all the Hansards can be sent to Mr. Justice Zuber in his inquiry, since his inquiry is fairly wide, particularly when you get into the last sentence that says something to the effect "and any other matter that might affect the justice system." While our inquiry is more narrow, it would be useful for us to send everything to him, including the reports, our comments and so forth.

My experience around here during the past 12 years is that if a matter appears in two or three reports, then sometimes something stands a better chance of getting done.

Second, I think it has been a useful morning. We have been able to show that Mr. McAuliffe was more substantially correct than might have been indicated. We really appreciate your testimony.

Mr. Chairman: Mr. Turnbull and Mr. Zabel, thank you very much.

We will break for lunch and reconvene at two o'clock. I remind the steering committee that we are going to be meeting here at 1:30 to discuss the other matter.

The committee recessed at 12:13 p.m.

CADEN
XC21
- P73

P-69

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COURT FACILITIES

FRIDAY, MARCH 27, 1987

Afternoon Sitting



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Sargent, E. C. (Grey-Bruce L)

Smith, D. W. (Lambton L)

South, L. (Frontenac-Addington L)

Wildman, B. (Algoma NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. South

Hennessy, M. (Fort William PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Elgin Law Association:

Roberts, M. L. D., Past President; with Gloin, Hall and Associates

O'Dea, M., Immediate Past President; with Carrie and O'Dea

Gibson, S., Vice-President; with Hennessey, Bowsher and Associates

Hennessey, M. J., Senior Member; with Hennessey, Bowsher and Associates

From the Oxford Law Association:

Legate, B. L., Member; with Nesbitt, Coulter, Legate, Micacchi and Hornick

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Friday, March 27, 1987

The committee resumed at 2:16 p.m. in room 151.

COURT FACILITIES
(continued)

Mr. Chairman: Come to order, please. I want to apologize to the various witnesses for our delayed start this afternoon. We had an unexpected matter come before the committee and had to deal with it during the lunch break, so I want to extend the committee's apologies for having kept you waiting beyond the scheduled start time.

I wonder if the representatives from the Elgin Law Association would come forward at this point. Would you please identify yourselves and your roles in the association for the record?

ELGIN LAW ASSOCIATION

Miss Roberts: If I might, I will speak. My name is Marietta Roberts. I am a past president and have been a member of the Elgin Law Association for a number of years. On my right is Mike O'Dea, the immediate past president, who will be speaking to you this afternoon. On my far left is Steve Gibson, the present vice-president of our association, and Murray Hennessey, a senior member of the bar, who has been well acquainted with our courthouse for a number of years and who will be our main spokesman today.

Mr. Chairman: Please proceed. Do you have a statement?

Miss Roberts: Yes. I am asking Mr. Hennessey to read it.

Mr. M. J. Hennessey: Thank you very much for giving us the opportunity to appear before you. We have read the report of the Provincial Auditor, and I must confess that the report sits very well with me. It identifies the problems as he found them. He compared his findings with those of Mr. McAuliffe, and notwithstanding that he has some reservations with Mr. McAuliffe's observations, if you examine the auditor's report, I think you will find that in most cases he indicates that the reports of Mr. McAuliffe are substantially correct. I take it the use of the word "substantially" is from his accounting background, but when we examine the auditor's report, it takes the form of comparing Mr. McAuliffe's comments with his own observations; the auditor agrees entirely with some of McAuliffe's comments. I would like to take a few moments to review with you some of the highlights of Mr. McAuliffe's statements and the auditor's comments, because I do not think they are at odds although, when reading it, you would think that perhaps there is not full agreement.

1420

McAuliffe says, "Nothing has been done to the building since it was built in 1852. Public inspection panels have condemned the building for years but their recommendations have not been acted upon. The building is crumbling due to decades of neglect and now is an 'architectural fire trap'. The

building has no fire alarms, smoke detectors, panic bars on doors or fire escape. Conditions are among the worst in the province."

The auditor says this is not entirely correct and then points out that the building was perhaps restored after some fire in 1898. In 1967 the exterior of the courthouse was refurbished. In total what Mr. McAuliffe had to say was correct with some minor details wrong. I would have to go back to look and see what McAuliffe said, and he says it has "no fire alarms, smoke detectors, panic bars on doors....conditions are among the worst in the province." I have to accept that. Being a user of the facilities, I do accept that it must be among the worst in the province.

The auditor then goes on to mention the failure from a fire regulations point of view. I think this is apparent to anyone who has examined the building or read anything about the building. It does not take a genius. I have some photographs here. We are very fortunate now; we have five gongs in the building. If you reach them through the smoke of the fire, you can pull the gong. That alerts everybody within 50 feet and you would go to the next gong. We do have that and that is an improvement, I would imagine. In any event, that is the extent of it.

McAuliffe says, "There is no lockup for prisoners and there is only one waiting room. Rape victims, witnesses and accused assailants have to sit together in one small room, sometimes for hours, awaiting the trial. This can be very intimidating."

The auditor says, "This comment is substantially correct." "Substantially" again I attribute to his accounting background. We say that it is entirely correct. If there is anything to temper McAuliffe's remarks, it is, "This can be very intimidating." I imagine that is his point of view and perhaps it is one on which you would have to have more evidence.

On my way down here this morning, Mr. O'Dea was telling me that over in the provincial court building the new crown on occasion has been harassed, to say the least, on her way from the courtroom to her office or whatever. After having dealt with a case, she has to walk through this crowd that amasses in the hallway. Incidentally, the judge of the county court or the district court must do the same in the main courtroom over on Wellington Street, which I will refer to as the district courthouse as opposed to the provincial courthouse, which is in another area of town.

McAuliffe says, "Handicapped people cannot get into court unless they are carried up flights of stairs and then they cannot get out." The auditor says, "This comment is substantially correct." It is correct. We have cases now in the use of the courtroom where the commissionaires, or if it is a police matter, a criminal matter, are actually instructed not to assist anyone in carrying a wheelchair up to the second floor, because either they are not covered by compensation or they may drop the witness and incur further liability. As a result, if you are going to have a witness for you in any case in the county courthouse in Elgin county and he is an invalid or is confined to a wheelchair, then bring along your own lifting devices, because that is the only way you are going to get him into the courtroom.

McAuliffe says, "The court has to be adjourned if it rains heavily because the roof leaks over the judge's bench and down lawyers' backs." The auditor says, "This comment is somewhat exaggerated." In my 30 years, I do not recall it ever happening that we had to return anything, but I think the point is made. It is an old roof. We have had it repaired. The county put a new dome

on it some years ago. I must confess, the leaking of the roof to the frequency that may have been referred to by Mr. McAuliffe may have been slightly exaggerated, but the roof did leak.

McAuliffe says, "There is no public telephone, no coffee or cold drink machines and no hot water in washrooms." That is absolutely correct.

I now look at the local bar. The local bar has a library on the second floor of the main courthouse in St. Thomas, and it has a telephone.

Mr. Chairman: If I might interrupt you, sir, I want to encourage members of the audience, who seem inclined to close the doors, if they are having difficulty hearing, to come forward, please, because we have problems with air circulation in the room. Sorry to interrupt.

When you said "local bar" did you mean the local lawyers?

Mr. M. J. Hennessey: Yes, I did.

They have a library on the second floor of the courthouse, and we do have a telephone up there for our use. Recently it came to my attention that a lot of the members of the bar who are down on the first floor and happen to be in the sheriff's office or the registrar's office and have to make a quick phone call on occasion, utilize the phone in the sheriff's office. Now they are taking strong objections to that and directing us to our own telephone on the second floor on the far side.

You have to be familiar with the layout of this courtroom, but you do not just go up one side and walk through to the library at the end of the second floor unless you go through the main courtroom. You cannot do that. You go down a flight of stairs and over and up a flight of stairs, and this is how it works. We have no access to any public phones, nor does the public, for that matter. If the public wants to use a telephone during the course of a trial, it has to use one of the phones in the sheriff's office or the registrar's office or the phone in the library.

True, we do not have any coffee and cold drink machines, but we are not that concerned. I would point out that when the Attorney General's staff indicates this is not a requirement in this building, it is perhaps because the courthouse is located in the downtown area and you can always go out and get coffee and cold drinks. It is the downtown area, but I really do not know. We are not in a large centre like Toronto, and in my provincial way of looking at it, we are still four blocks away, and we do have winters. We are in southern Ontario, but we do have winters and it can be nasty. But you are right, we are not really concerned with that.

Mr. Ferraro: Why do you not just say it is a pain in the neck?

1430

Mr. M. J. Hennessey: Well, I was not up that high.

The local bar in the past few months was invited--or perhaps not invited--to respond to a profile report put out by the Attorney General. I notice by the memorandum from the clerk that anything you are going to present to this committee, you should present in 20 copies, so I did make 20 copies of it. I do not know how to distribute them.

In any event, the review of the local bar not only sums up in a great way the utilization of the courthouse facilities but it also directs its attentions to the physical accommodations for the administration of justice, both in the provincial court which is a relatively new building, 16 years old, and in the old county courtroom.

I invite you to examine it, although I would ask Mr. O'Dea in a few minutes' time to direct his attention in that report to the utilization of the facilities in Elgin county on the provincial court level and on a county, District and Supreme Court level.

I can conclude my remarks by taking off my hat as a practising solicitor in Elgin county and referring to myself and our delegation as just citizens of Elgin county. I have been in that county now for 30 years. The courthouse has been there since 1852. It is in a deplorable condition. For years, we have talked to various people, various politicians. No doubt, it happens in all your ridings that there is always somebody on the government side who is not a member but who is powerful. He knows how to get to somebody's ear in Queen's Park. We have listened to that, and that has gone away, and people have talked to them. Normally, as it happens in your ridings, nothing results, really. The man obviously was not as powerful as he thought or anyone else thought.

Mr. Philip: It is the opposition that really has power.

Mr. M. J. Hennessey: That is what it is. Well, in any event, when the opposition did take power, we tried the reverse. There was a whole new group of people then who had the ear of somebody at Queen's Park, so we tried that. Nothing has really developed.

We have had the Ministry of the Attorney General saying, "Well, it is the Ministry of Government Services' obligation." In Elgin county, we have the added problem that we are occupying leased premises, so when it comes to fire hazards it says, "Take it up with the landlord." The landlord left the building because of that reason. It was left to the county of Elgin. We have had the buck passed from pillar to post for 25-odd years. Nobody suffers. True, we can perhaps put up with it. We do not like it, but we can perhaps put up with it.

It is the perception of justice and the administration of justice that is really suffering in Elgin county. We cannot have people having any respect for law, order and authority if you are bringing them in and treating them like cattle. They meet in the hallways and have no privacy to consult with their solicitors. They are mixed up with the accused and the witnesses. In any event, it is the perception.

I do not get into the courtrooms that often, but on occasion I find myself in a courtroom. Two or three years ago, I went over to London. I had not really examined its new courthouse facilities--they are what, about 10 years old now? I went into a Supreme Court courtroom with a client who was, for the sake of discussion, a farmer in Elgin county. We walked into this courtroom together. It was my first occasion in there, and obviously, his first occasion in any courtroom.

I could not help but be impressed with the courtroom, perhaps overly impressed. I think maybe they went a little overboard in construction. I must describe the courtroom. The courtroom was beautiful, with oak panelling and oak furniture. The judge's bench was elevated about two or three feet and he sat right up there. I thought it was quite impressive myself until the client

leaned over and said to me: "You know, there is only one thing missing in this courtroom and that is a cloud just below that bench. Then we would really think we were getting law from on high." I thought to myself: "He is absolutely right. The room could intimidate the people who were intended to use it." It was just a little too much.

If you come over to Elgin county, you will not be intimidated one bit. In fact, nobody is going to be looking at you from on high unless it is that big dome in the main courtroom, which creates all kinds of hazards. We have difficulty heating the building. We have difficulty cooling the building. We have difficulty with sound--everything. The problem is the perception justice takes on when you try to administer it in accommodation such as we have in Elgin county. I know the people in Elgin county are no less deserving of proper accommodation than anyone else in this province, in Toronto, Ottawa or wherever. We are very patient, as indicated by our repeated demands over 25 years.

I would like Mr. O'Dea to comment on the utilization because I think there have been some misconceptions in some reports about the nonuse of the facilities from time to time.

Mr. O'Dea: Thank you very much for giving us this opportunity to appear. I want to start back a bit further before I speak to the report Mr. Hennessey has given you. After meeting with our courthouse committee, I was the primary author of that report.

I perceive a problem that goes a bit deeper when we look at the potential financial cost to the taxpayers in this province somewhere down the road in dealing with the situation in Elgin county. Eventually, it is going to have to be dealt with.

In the early 1960s, the county of Elgin, which shared that large building with us, began to realize that its numbers and services were outstripping the space it had. Consequently, they built a smaller administration building on the courthouse block. In the late 1960s and early 1970s, they required more space, and consequently the old jailer's house was utilized for their engineer. As they progressed into the 1970s, they began to realize more and more that as their services and the population again expanded, they had less and less space.

Our space requirements had not increased over the 135 years the administration of justice shared that facility with the county of Elgin. In fact, our space requirements have been decreased by edict of the fire marshal; that is, we cannot use the third floor in any fashion. In 1981, the county had a survey done to attempt to determine whether, by removing some buildings and adding on to other buildings, it could effectively house all its services on the courthouse block and continue to share it with the administration of justice. After they completed their survey, they determined they could not. They also had engineer testing done on the third floor to determine if it could house their archives. It was determined by stress tests and other engineering tests that the third floor was totally unsuitable for any use that would be weight-bearing because of the nature of the beams and trusses between the third and second floors. Consequently, the county went looking elsewhere for premises.

1440

When the county was looking elsewhere we saw a window of opportunity. We

noted that the administration building, which at that time was about 15 to 20 years old, and the engineer's building would become available along with this large building we had. We felt we should really attack the point then because we were going to have a great deal of space. We had an entire block that was designated in 1848 and again in 1852 to be used solely for county and municipal purposes. You have to look at the history in 1848 and 1852, because until 1968 the county of Elgin was responsible for the administration of justice. Consequently, those buildings can only be used by the administration of justice--that is, the Ministry of the Attorney General--or by the county of Elgin. They did not want them.

We submitted a brief in April 1985 to Robert Welch who was the Attorney General at that time. We had submitted briefs before. You may very well have our April 1985 brief somewhere in your records. We outlined all the problems Mr. Hennessey has briefly discussed with you. We approached the Attorney General at that time with the idea that we had two buildings, the main building on Wellington Street, the district court building, and the St. Catherine Street building that housed the family and provincial criminal court. Both were overcrowded and were tremendously inconvenient and problematic to the public users. Why should we not amalgamate all our facilities on this block?

As it turned out, the county was given a deed to what used to be a nurses' residence across the highway from the St. Thomas Psychiatric Hospital. They were given the building for a dollar. They were sold the land for \$47,000, and they began reconstructing that building to house all their facilities. Yet at the same time that was done, nobody looked down the road to what was going to happen to the courthouse block in St. Thomas. We had an unwilling Attorney General who would say, "The Ministry of Government Services should deal with these problems, and through Government Services, the county of Elgin." We have an absentee landlord who does not want to have anything to do with that block any more. Where do we stand?

Now the county of Elgin is saying, "We will sell you that block for \$1.5 million." That is ludicrous. Nobody looked ahead; nobody. If you want to talk about financial mismanagement--forget the cost of renovating that block and forget the cost of providing combined facilities for all the courts in St. Thomas--look simply at the fact that somewhere along the line, somebody is going to have to pay the county of Elgin a good buck to get that building, when if two ministries had put their heads together, a trade would have been made.

That is the local thought in Elgin county and I think it is a reasonable thought for the average taxpayer to have when you consider what I will personally call the gift to the county of Elgin of that building and when you consider the fact that they overspent their limits on their renovations and now they want money from somebody in Toronto basically to reimburse them. They have not been shy about making that point quite clear. That was the most recent item of neglect, as we see it in Elgin county, in relation to the use of those facilities for court purposes.

The county of Elgin has a great fear that if our services move out, because of the memorial made in 1852, that block cannot be used for any purpose other than their purposes or ours, yet they are still asking for \$1.5 million. From my standpoint, there was a window of opportunity with the Attorney General and Government Services back in about 1983 or 1984, when the deed south of town was given to the county of Elgin, to make a very reasonable trade from the standpoint of the taxpayers not only in Elgin county but also

throughout Ontario, with respect to this particular block.

Take it at that point. We find ourselves, as we look at it, in a worse situation than we were before the county moved out because now we have an absentee landlord. The county's figures, as I read them, would show that of the \$102,000 a year we pay it, between 1982 and 1984 an average \$35,000 to \$40,000 yearly was used for the purposes of dealing with the large courthouse. Our judges would tell you of the pleas they had to make to the caretakers to vacuum the carpets, to wash the windows and to dust off the common areas. Floors are not cleaned and rooms are dirty. If I was in a room today and left a coffee cup, I still may find it there next week. In other words, we were not being served at all by the owner of the building.

You have to look at that as you read the report Mr. Hennessey gave you. I want you to ignore any reference at all to the practising bar from Elgin county or to the visiting bar from Middlesex, Oxford or Kent, from where we often draw people. I want you to forget any reference to the judges who sit there or to the Supreme Court judges who visit there. I want you to look at the points made that affect the public. It is ludicrous that 70,000 people in Elgin county have had to cope with the situation in both of those buildings as described in that report.

I have had to apologize to witnesses for lack of preparation areas, professional witnesses attempting to balance their notes and their case books on a hard chair that I suspect dates from around the turn of the century. They are bolted to the floor and to the wall. The seats are no more than maybe 12 to 14 inches in width and length. It is extremely difficult to attempt to review your notes and prepare yourself in a hallway while 20 or 30 other people are out there smoking their cigarettes or talking or making noise or whatever. We have no accommodation for such a person.

I want you to give some thought to the fact that when we have called an independent witness in a criminal case, we have had to apologize to that witness because we had to leave her or him in the same room with the accused, subject to the taunts, the stares and the nonverbal threats the witness perceives.

I want you to give thought to the difficulty of access to the second floor, not only to the handicapped but also to the elderly. I tend to disagree with Mr. Hennessey on the importance of a simple coffee machine. It is a simple convenience for a witness or a party stuck there from 9:30 in the morning until one o'clock in the afternoon, that if they have time on their hands, they can go and grab a quick cup of coffee.

I want you to look at the witness rooms, at the nature of accommodation that we have for people while they are waiting. We will give you the one set of pictures we have. In these photographs, we have attempted to depict the various different areas that were referred to in our April 1985 brief to Mr. Welch and in the brief you have before you today. I want you to give consideration to the lack of room for any person waiting for a hearing and to the total inability to avoid the party on the other side, or the accused, or the other hostile witness.

I want you to give consideration to the fact that the only public washroom is on the main floor. If I get my handicapped client to the second floor and he then indicates to me he has to go to the washroom, I have to get him back down to the first floor again. I want you to make note of the fact that the only person who is blessed with hot water in that building, because

of his pull, is the district court judge in his private washroom. There is not a hot water tap throughout that building.

I want you to give consideration to the fact that during sittings between May and the first part of July, at which point the courts normally go on holiday, to do a trial in the large or small courtroom I normally go through three shirts with my robes because of the heat. You cannot run the air-conditioning throughout the trial because you cannot hear. If you leave the windows open, there is the noise of the traffic on Wellington Street. You are stuck with a situation where the windows have to be closed. It is stuffy. The sun hits the dome and it is just like a beam of light that raises the temperature in that courtroom for anybody sitting in the main area, where counsel, parties and the judge sit, by anywhere from 15 to 20 degrees.

1450

I want you to give thought to the juries we ask to come in, sometimes from as short as a couple of hours to as long as two weeks. I want you to look at their accommodation. I want you to look at their room, which cannot be properly heated during the winter. It cannot be properly cooled during the summer. It is right next to the Supreme Court judge's chambers. If he really wanted, he could listen. He could hear their deliberations.

I want you to give consideration to the fact that I personally, and every president before me, has had to apologize to the visiting Supreme Court justice for the deplorable condition of his chambers, a small room that I would estimate to be about 10 by 10 with furniture that is at least 40 years old. It smells as if it 40 years old. He is stuck there for anywhere from two to three weeks and that is where he has to conduct his business. That is not right.

It is not right from the standpoint of the people who primarily use the building and the people who may only use it once in their life, but come away with a lifetime impression of what the system of justice is offering them in this province. The building is 135 years old. Subject to the normal cosmetic changes, perhaps a change of carpeting, perhaps a change of wallpaper or paint, it is still the same. We still have the same rooms. We still have the same square footage in the rooms, except now we have an entire floor that we cannot use.

Mr. Hennessey made note of the utilization of the space and I believe you may very well have the Attorney General's profile report for the county of Elgin. That will be in and among your package. I am a member of the executive of the county and district law presidents' association and I have taken the opportunity of reviewing with other jurisdictions the profile reports that they got. To a person, they indicated that they have no idea who put together the statistics that were used in these various reports to determine, as we saw it, a way to wait, whether this is an immediate need or a need that could wait for another five, 10 or 15 years.

If the Attorney General's report were taken at its face value, our judge would sit 250 days a year. He would not get all the statutory holidays. He would basically get his weekends off. He would get no other holidays. We have one judge and the report indicated and predicated the use of our facilities on two courtrooms. We still have not figured out how we are going to manage that with one judge.

The report basically--this is the point I want to make to this

committee. You look at utilization of space and you attempt to balance it with whether money should be spent in an area. We investigated the records for the last two years in Elgin county. The courtroom and the judge were booked approximately 95 per cent of the time. The free time, for the courtroom or the judge, was in situations where a settlement immediately before trial or a guilty plea immediately before trial was made, and because of time constraints and short notice you could not get another hearing on.

The courtroom, the judge and the staff are used to capacity. I do not want a situation where there is a perception that the courtroom sits empty and you can deal with the problems that Mr. McAuliffe and the auditor have set out in their report, because it does not sit empty. We service 70,000 people. We service six police forces. We service a great number from the counties of Middlesex and Oxford who quite often because of jurisdictional requirements will be in Elgin county to do their business. Under the circumstances, the main building and the St. Catharine Street building are both overused.

I also ask you to pay some attention to the situation at St. Catharine Street. We have tended to focus our concerns on the Elgin county courthouse, the old courthouse, because of its age and its condition. But the courthouse on St. Catharine Street which was built in 1971 and was probably outdated by 1975 is in the same condition from the standpoint of public perception and public use, and I think that is important to consider.

Generally, there must be steps taken immediately to avoid what I can see only as an increase in cost each year that facility is ignored. The problem will not go away. The problem should have been dealt with 20 years ago, and we have been trying for 20 or 25 years to get somebody to deal with it. The cost today to the province may very well be prohibitive when it looks at these buildings.

The Elgin Law Association has, on its records, a motion that is set out in the response to the Attorney General and, in closing, I will simply indicate to this committee that in its response to the taxpayers of this province, to the taxpayers of Elgin county, a good and complete financial study of the cost of renovating, adding to and subtracting from the Wellington Street block, and the cost of maintaining it in the future is going to have to be made.

Against that is going to have to be weighted a good, full, financial study of the cost of putting up a new and combined building elsewhere. My personal preference is that--although I appreciate the history of that building, what has gone on there in the past and what can go on there in the future, looking at it realistically, that appreciation may have to take a back seat to the simple cost of putting up a proper facility in our county.

But it cannot be an excuse for delay, for saying simply, "Let's take 10 years and do a study since they'll still be there." We may very well be there, but it will be the administration of justice that will suffer the greatest loss, because the users are the people to which the politicians are accountable. The users, if you want to talk to them, are the people who are really telling us, the members of the practising bar, and anybody else who will listen that "It is unfair what I had to go through when I went there for my case."

Thank you very much, Mr. Chairman. I will turn the matter back over to Miss Roberts.

Miss Roberts: I will be very brief, gentlemen. I guess I am the person here to be the storyteller. I think that the statement by Mr. McAuliffe indicating that our courthouse was in a state of neglect--you have heard the comments of my friend. It certainly is in a state of neglect. They shine it up every now and then. They have done more to it since they have left the building than they did in the past five or 10 years. They have painted the windows and a few things, but it is in a state of neglect, not only for the building itself but also for the persons who use that building.

I have spoken to the crown attorney. He has to hire an ambulance service so he can get people up to the main courtroom. He does not do that once a year. That might happen three or four times a year, even in our small county.

Mr. Wildman: This is for handicapped people?

Miss Roberts: Yes, for handicapped people, and those are his witnesses. I am not talking about the times we have to do it for our witnesses. We cannot carry them up ourselves because we become liable for it. You have to get someone who has insurance for that purpose. We have done it once or twice in my firm, I know, and we feel if we hurt someone, we are going to be extremely liable.

There is not only that. You must also consider the facilities for the witnesses, for the accused and for the police officers. Police officers have nowhere to stand other than out in the hall with everyone else. They have no secure place to put anything they have, an area for their coats or their hats.

I spoke to the chief of police in St. Thomas and I asked, "What are your instructions to your officers when you take an accused who is in custody over there?" Accused are not always in custody, as you are aware, but I asked about those who are in custody. He said: "We tell them to stand off in a corridor. We put the accused in the corner and try to block him off from the rest of the people." Those are excellent instructions, and that is the only thing they can do.

1500

If you know where our jury room is, sometimes the prisoner is held just outside the jury room. It is a very small area that is used by the court constables to make coffee. I sit as a deputy small claims court judge from time to time, and I sit in the jury room for a closed court situation. Four people in there are crowded; 12 people in that room is a disgrace. There is a table and enough chairs around that table for eight, at the very most. It is better if there are six. The rest of the jurors have to sit around the edge of the room. Do you expect appropriate deliberations to occur with respect to that?

With respect to the problems of secure areas for accused who may be dangerous, you have to have two police officers, maybe three. You do not know whether they are going to run. We are not as unlucky as they have been in Oxford county, where someone jumped out the window and took off. That has not occurred yet, but we have a security system.

I must tell you this, because it is one of my better stories. I was sitting in the main courtroom, and I did not realize they had put in a security system. I was listening very carefully to what the witnesses were saying, and I was feeling the bottom part of the dais and pushed a little button. I thought, "That is interesting," and I pushed it again. Then I

realized I did not know what it was. Approximately four minutes later, the deputy sheriff, who was a woman in her late 50s, came up and said, "Is there anything I can do?"

That system puts on a red light down in the sheriff's office, but I have talked to the chief of police to see what his instructions are for security. Even when notified, the sheriff still has to contact the police. He does have a sword there that he can take upstairs. He has indicated he will do that if I require it. I cannot resist it; he could not run upstairs if he tried, with or without the sword.

The east entrance of our building has what I call the major security system. It is an old baseball bat that is back in the corner, just in case. I do not know what that is going to be used for. The situations are humorous, but they are there. We are lucky we have not had anything happen in Elgin county yet. My concern is for the people of Elgin county and their perceptions.

Turning to other little details, the building is leased from the county. There is no question about that. The services we get from the county are minimal. The people of the province pay a very good price for a certain square footage, but a lot of that square footage is unusable. If you are going to re-rent the building, make sure you know whether it is usable space you are renting. Do not rent a space that cannot be used by anyone.

We in the Elgin bar pay one of the highest amounts in the province to belong to our bar association, because we are such a small bar. There are about 50 of us. We have a library, a fairly good one. We are trying to update it as much as we can. After 4:30, we cannot get to it. There is no climate control, and our books are deteriorating very quickly.

The building is locked. It has a good security system after 4:30. They lock the building completely. They have locked the crown attorney and a defence counsel in there. All the offices were locked, so there was no public telephone and they could not call anybody. They had to break into an office to get a telephone. What they did was to crawl out a window. If you know these gentlemen, they are about 250 pounds. It took them a little while.

Mr. Philip: But did they reach an agreement?

Miss Roberts: Yes, they did. I think plea bargaining was done on the way out.

Mr. Ferraro: Without the sword or the bat?

Miss Roberts: That is right, without the sword or the bat. They did not even break anything to get out. Those are situations that occur. The judge may be locked in. At one time, he was locked in, and they did not realize it. Two of the ladies were locked in. There is a two-door system. Once one door closes and the other door is locked, you cannot get out without a key. They were locked in this limbo, but they were lucky enough to holler and scream and be allowed out.

The important thing is to realize that the service of the people in Elgin county is our priority.

My last point is that we have a registry office, and that registry office now has lots of room for documents but no room for people to search. They are searching in the windows. They are using window casements. They do

not have any burglar system there either. If there is a fire, they have one door in that building by which to escape. That is all they have. You cannot get out those windows if there is a fire, because they are lead windows and there are bars on them.

Mr. M. J. Hennessey: We will leave some photographs here. Obviously, they are coloured and they should not have been. If we had had a captive cameraman at the time, we would have had them in black and white.

Mr. Chairman: I hope you are going to be receptive to answering some questions. We do have some time constraints. We have other witnesses who wish to appear before us this afternoon, but I have two members who would like to pose some questions. At some point, if we have continued questions, we are going to have to reach an agreement on a cutoff so we can hear our other witnesses as well, but we will proceed until we reach that point.

Mr. Gillies: Miss Roberts and your colleagues, I will be fairly brief, because your presentation is so comprehensive you have answered a lot of the questions that occurred to me. Certainly, some of the situations you describe in this facility are nothing short of bizarre. Without having toured it myself, I am rapidly coming to the conclusion you need a new courthouse. I do not think there is any doubt about that.

With that in mind, I am looking at the auditor's report, the comment made at the top of page 13, "It should be noted that the construction of a new courthouse (or purchase of and major renovation to the existing courthouse) is the number two priority in the ministry's five-year capital construction plan for courts."

My question to you is, based on your ongoing negotiations and discussions with the province, do you have any actual hope you are going to see either a new facility or a complete renovation within that time frame, or, without wanting to put words in your mouth, have you heard it all before?

Miss Roberts: This we are pleased to hear. At one time we heard we were not even on the list. We heard we were number five on the list, something like that, and we were pleased to hear we are a number two priority. We are hoping there has been enough publicity that this is something that will stay there for the next three or four years. I understand the government's position and the need to look at all facilities, but we are hoping; just hoping. We have heard it before, but never at number two.

Mr. Gillies: You have no information to conflict with this?

Miss Roberts: No, I do not.

Mr. Gillies: The reason I ask is, the group that was in from Hamilton this morning disputed utterly the comment that it was within the five-year capital plan. They purported to have information to the contrary, which you have not.

Miss Roberts: We do not have information to the contrary, just what we have received from the Attorney General's department, which was not extremely helpful. It gave four or five choices at the end of it as to what they might do. We do not have complete confirmation that we are on that list, but rumour has it that we are.

Mr. Philip: That is not clear to me: four or five choices concerning what they might do in St. Thomas-Elgin or in the province?

Mr. O'Dea: As I understand it, those were general proposals that were meant to be province-wide, in other words, for example: it is a new facility; keep the old one but renovate it; do nothing--things of that nature. I think they were the same in each of the reports that went out.

Mr. Philip: In each of the areas. Yes.

Mr. Gillies: In the situation you describe, and we have heard a couple of stories of this nature around the province, the crowding in the waiting room, the lack of an appropriate lockup facility and so on, until such time as you get a new facility, is there anything that could be done in the space that is there to improve the situation for you? Is there a reallocation of space within that building that could accommodate some of your concerns?

Miss Roberts: I am sure there are people down here who could help us with that. We have thought of various ways and we have put various proposals in front of people. If we were allowed to move--even the judges' chambers could be made into a lockup area for prisoners; things could be done, but it might take--we do not want a patch-up job. We would like to have something that is going to look after the people of Elgin.

Mr. Gillies: I appreciate that. We have a county courthouse in Brantford that you may know, which is of a similar age.

Miss Roberts: Yes, I do.

Mr. Gillies: While we are looking forward to a new facility at some point, we did make some changes, and it came about from dragging Roy McMurtry through the building some years ago and making him look at it all.

Miss Roberts: You will have Judge Fanjoy. He can tell you exactly. He practised in our courthouse for a long period.

1510

Mr. Gillies: I know Judge Fanjoy well, and he never hesitates to tell me what he thinks.

Access for the handicapped and access to facilities for seniors is a real concern. I am somewhat surprised that the court attendants, the police officers and so on are under instructions not to help people in wheelchairs or otherwise incapacitated. Does your local police department not have either insurance and/or workers' compensation coverage?

Miss Roberts: It is the Ontario Provincial Police as well. They would not have workers' compensation for doing that. It is not within their job description to carry up people. Ambulance attendants are properly trained to do that and that is the purpose.

Mr. Gillies: I assume there is some sort of courthouse attendant.

Mr. Wildman: There must be a court constable.

Miss Roberts: Yes, but most of them are over 75, and we try to help them up.

Mr. Gillies: I think I get the picture. You are not so much concerned about the insurance for him lifting other people, as for him being lifted. Okay.

Mr. Philip: You said that the crown attorney has sometimes hired special people who are qualified to take up their witnesses. No doubt the defence will sometimes pay to take up their witnesses. Since the police have refused, what would happen in the case of an accused person being disabled? How do they get him up the stairs?

Miss Roberts: They hire an attendant to do that.

Mr. Philip: So the OPP would go outside themselves and hire--

Miss Roberts: No. The accused is the responsibility of the crown attorney, and that is who does it.

Mr. Philip: The crown attorney brings up the accused, not just the witnesses.

Miss Roberts: Yes, he is responsible.

Mr. O'Dea: I might point out that it is not that bad on a criminal situation. As Miss Roberts has indicated, the crown is responsible both ways, whether it is the accused or even a defence witness. The crown will normally cooperate in that regard. The major difficulty is in a civil case where police and crown are not involved. At that point, you have to go outside and retain outside assistance to get a victim of a car accident or a person who is disabled up those stairs. The situation on the civil side, as we see it, is much more serious. Again, it is the client who is paying for that service.

Mr. Gillies: That was the next question I was going to ask you. If I were a wheelchair person and I retained you as my defence counsel in a civil matter and you had to hire an ambulance service to get me up to that courtroom, you would bill me. Part of your account would be the provision of that service. I would think, and I do not know if this has occurred to any handicapped people in your facility, under the Human Rights Code they are being discriminated against in terms of the provision of a government service on the basis of their handicap.

Miss Roberts: Yes. We have had a situation like that in our firm and we asked the person to pursue it. They refused because they did not want to go through all the bother.

Mr. Gillies: Related then to that hallway situation, the crowding, the lack of lockup, you mentioned in your presentation--I think it was Mr. Hennessey--harassment of a crown attorney in the hallway and harassment of the judge. Is this a common occurrence?

Mr. M. J. Hennessey: No. I suggested that perhaps the circumstances relative to the district court judge lend themselves to the same possibility. Oftentimes, he leaves the courtroom and walks down the hall to his chambers if there is a recess. He has to go through that same flow of witnesses and so on. It just lends itself. I know of no occasion where that has happened.

Mr. Gillies: Okay, not with the judge, but you were aware of occasions where it had happened with a crown attorney?

Mr. M. J. Hennessey: Perhaps not in that building.

Mr. O'Dea: That has occurred on St. Catharine Street. The duty counsel room is across the hall from the crown attorney's office on St.

Catharine Street, and Ms. McGowan, who is the recently appointed crown attorney for Elgin, has been bumped on occasion, has been called names and sworn at. She is not as extremely worried there because in that same hallway, along with perhaps that accused person and the crown attorney, there are other defence counsel and police officers.

However, the crown attorney's office now in the district court building is on the main floor and the crown attorney, to get to the main courtroom, must walk up the stairs and then again down that hallway, perhaps with the same accused persons she may have encountered during preliminary inquiry over at the provincial court building. It is a very worrisome matter to her.

I might also point out in relation to security that the door to the judge's chambers on the second floor is accessible to anybody using that floor. When you come up the steps, the landing at the top of the steps is immediately adjacent to the judge's door. The door is glass. Anybody who knows the judge is in there could gain entry. Again, our court constables are all retired. They could not provide any assistance whatsoever if there was a dangerous situation either during a civil hearing or when court was not sitting but the judge was utilizing his office. There is no security in that regard and that has the judge extremely concerned.

Mr. Gillies: The possibility of intimidation of the judge, of attorneys on either side of a case and of witnesses exists on a day-to-day basis. You have a mixing of witnesses and accused in the same holding area. You are describing a situation that seems to frustrate totally the proper execution of a judicial process.

Miss Roberts: That is correct.

Mr. Gillies: I will finish with one or two questions about the fire situation. Page 12 of the Provincial Auditor's report talks about the deficiencies in terms of the fire code and so on. Mr. Hennessey mentioned the installation of gongs in the building. To the best of your knowledge, is that all the landlord intends to do in terms of improving the fire situation or are there other plans?

Miss Roberts: They took the fire hoses off and took them down to the fire station to be tested. The firefighters refused to do so because they would fall apart. That is the second step that has been taken, but there have been no further steps that I am aware of.

Mr. Wildman: Are they providing new fire hoses?

Miss Roberts: I am not aware of that. We have not been told.

Mr. Gillies: So the fire hoses were not capable of being tested because of their condition.

Miss Roberts: That is correct.

Mr. Gillies: All the circumstances outlined in the report then--

Miss Roberts: Still remain.

Mr. Gillies: Lack of fire resistant materials, no proper closures between floors, no fire detection devices, no emergency lighting in the steps and exits, no signs identifying emergency exits and so on.

The other concern I have is that you mentioned the situation you have with the doors on the building. They are clearly not a crash type of door where if someone were trapped in the building he could get out. If you are in there, you are locked in. If a fire situation developed, you could not even get out of the building.

Miss Roberts: You can break glass.

Mr. Gillies: Unless you tried a window or something.

Miss Roberts: That is right.

Mr. Philip: Have there ever been any arson cases tried in your building?

Miss Roberts: Yes, we have had some arson cases. I do not like to be an alarmist, but not very long ago they had to pick a jury panel and someone must have dropped a cigarette butt in a wastepaper basket. The caretaker saw it. It was smouldering and on fire. There was no water readily available to put it out so he carried it down the stairs and outdoors.

Mr. Philip: I was not trying to be funny.

Miss Roberts: I know.

Mr. Philip: It strikes me that somebody who wanted to get away could set fire in there.

Miss Roberts: That is correct.

Mr. M. J. Hennessey: I do not think there is any question that you could not open a hotel tavern today with the accommodations we have. They would not even look at you.

Mr. Gillies: With the situation that is described here, the Liquor Licence Board of Ontario would not grant a licence. There is no question.

Mr. M. J. Hennessey: No, forget it.

Mr. Gillies: I will close with the thought that it really sounds awful, but I also want to agree with your comments about the courthouse in London. I went there once to fight a traffic ticket and it looked like Heritage USA. It was really something else.

Mr. Chairman: Before we go to Mr. Wildman, we talked about fire safety. You have expressed your concerns and so has the auditor. What would happen in the event the members of the bar and the judiciary simply refused to operate in that facility, based on safety reasons if nothing else?

Mr. O'Dea: That matter has been discussed before, in part, and there is a basic consensus that we would be the only people who would gain by that. The major losers would be the people we serve. We are just not going to withdraw our services to our clients because the province has ignored its responsibility to them. It was a matter raised about three years ago and, generally, with the people I talked to, it was simply flatly turned down. Why should we, even by suggestion, inconvenience the people who use the system in Elgin county more than they are now? It would be heaping insult upon injury. Under those circumstances, it just could not be done; it would not be done.

1520

Mr. Chairman: I guess the other side of that could be that, at some point if a disaster did occur, you could be seen to not have done all that you could have done in the situation.

Miss Roberts: We have considered that as well.

Mr. Wildman: Along those lines, is it not possible that on certain occasions, because of particular types of cases and concerns about security, you could in fact request a different venue?

Miss Roberts: The problem is the money it costs our people to go from Elgin county into Middlesex county, and Middlesex county is where we would go. It is just that extra added cost that indeed--it will have to occur with a couple of cases I know that are coming up because the people are so severely handicapped. They may still be in a bed-type situation so we may have to do that.

Mr. Wildman: I have just a couple of questions. You talked about Mr. McAuliffe's comments about the building crumbling and many years of neglect. You have discussed the firetrap situation. You have agreed that it is, as far as you know, among the worst in the province. You also indicated that, over a number of years, you have made efforts to persuade politicians and government to respond to the need.

In your brief, you made the comment in the second paragraph, "We are left with the impression that we may well wait another 20 years before we see any effort towards properly addressing the problems that now exist and can only worsen as the years progress." In the light of the comment that was made that you are number two on the priority list now--keep in mind that you said you did not have confirmation of that--what is the basis for this statement? Is it just your past experience that makes you say you may have to wait another 20 years or do you have anything more concrete than the frustration you have experienced over the last 20 years?

Mr. O'Dea: The basis of that statement was a combination of the frustration we have experienced and the statistics the Attorney General listed in his profile report concerning courtroom use. We were extremely upset and surprised at the basis upon which the Attorney General made his findings as to utilization. He made his findings based on criteria that could not be met by a single district court judge throughout this province. It amazed us that, for example, he would suggest that the court would sit 250 days a year. It amazed us that he ignored or overlooked the fact that we had only one judge.

Mr. Wildman: Particularly when he said you should use two courtrooms.

Mr. O'Dea: That is correct. Having reviewed those statistics, we were quite concerned that it may have been a statement in some fashion saying, "Look, you can accommodate with what you have." Quite naturally, as you are well aware now, we totally disagree with that. The basis of that comment was a combination of the statistics and how we read them and the frustration over the past 20 years.

Mr. Wildman: You said earlier that you had no idea who was responsible for coming up with that priority list or designation or how they read the statistics. You do not know whether it was somebody in Government Services or in the Ministry of the Attorney General or what.

Mr. O'Dea: We do not know. We have taken many people through the facility and we have talked to many people, especially over the past three years, but we really do not know who accumulated the statistics. Our judge would really like to know who did.

Mr. Wildman: I also was very concerned about the comments in which you characterized the way the public is treated in your judicial system because of the physical facilities, comments such as treating people like cattle, no privacy being available and you are concerned about the perception of justice the general public in your county would develop or is developing. I am concerned about that as well, but I am more particularly concerned about the question of no interview rooms, the crowding in the hallway and no waiting rooms.

During these hearings, in another context it was suggested that perhaps the situation was not as serious as was first suggested by Mr. McAuliffe when he painted the scenario of a sexual assault victim being physically present in very close proximity to an accused assailant. It was suggested that gave the impression the two of them were seated together alone when in fact there were probably police officers available. As members of the bar, do you consider it any less unacceptable to have such a victim facing the accused assailant because there may be law enforcement authorities available in the same vicinity?

Miss Roberts: If I may speak to that, I think the members of the law being there does not change it one bit and may even heighten the difference between the victim and the assailant. It is being in a room because there is nowhere else to be. You know the trial is going to occur. If you have been a sexual assault victim, you are upset to begin with, and you are there, and no matter if the police have that person off in the corner, no matter if you are surrounded by the people who are going to be testifying on your behalf, you still are physically too close. You should not be able to see that person or you should not have that person peering around, looking to see who is involved.

Mr. Wildman: In effect, you should be able to avoid the person.

Miss Roberts: That is right. Also, the police officers have indicated to me they do not have a place where they can take their witnesses if they want to speak to them before a trial and say: "Yes, we are pleased you are here. Here is your statement. Would you like to review it?" There is no place to do that except right there in front of the accused.

Mr. Wildman: If you are a defense counsel and have to review something with your client, since there are no interview rooms--

Miss Roberts: You do it in the hall or upstairs on the staircase.

Mr. Wildman: If the people on the other side in the case are in the same hall, am I correct in understanding you are sort of whispering to one another?

Miss Roberts: That is correct. You try to remove yourself physically as much as you can. You try maybe to walk down the stairs if there is enough room or you try to find another area. If not, you whisper.

Mr. Wildman: In the case of a sexual assault, or for that matter another type of assault, in some ways, the very court situation may be intimidating to the victim.

Miss Roberts: It certainly is.

Mr. Wildman: This is just adding to it, is it not?

Miss Roberts: That is correct.

Mr. Wildman: Thank you.

Mr. Epp: Mr. Chairman, on a point of order: I think you should know that the Deputy Attorney General was before the committee yesterday and indicated he was aware of the case. He said he was not happy with it, that it was completely unacceptable and that he has given instructions it not occur again either there or in any other place in the province, that steps be taken to avoid it. I think it is important that you be aware of that.

Miss Roberts: Yes, we are aware of that and we are hoping we can have areas set out in our courthouse where we can put people and say, "Here you are safe."

Mr. Wildman: Mr. Chairman, on a point of order: It was in response to Mr. Epp's comment in questioning yesterday in which he tried to indicate that the presence of police officers could somehow mitigate the intimidating situation. Frankly, I think that is an unacceptable view of the whole kind of security.

Mr. Epp: Mr. Chairman, on a point of order: I did not indicate it was acceptable to have the two together if a police officer was there.

Mr. Wildman: You said it was better.

Mr. Epp: I did not say it was accepted at all. I think the whole situation is abhorrent, but it did happen and steps should be taken to avoid it in the future.

Mr. Chairman: I appreciate that, Mr. Epp. Are you finished, Mr. Wildman? Mr. Philip, you are next, and again I remind you of the constraints of time.

1530

Mr. Philip: On a number of occasions, I have been in a position of trying to encourage witnesses to appear in a case where they were afraid of being assaulted by the accused. I imagine that the difficulty for the police, certainly for the crown, would be increased astronomically by somebody's being in the same room with the accused, particularly if it was something like a gang rape, a motorcycle assault or a racist incident. I have been encouraging people to lay charges for those who have had racist attacks.

Miss Roberts: The situation is that the people who come do not know this is going to occur until they get there. They have not been to the court before and most of the victims or witnesses are not aware of it until they are thrust into that situation.

Mr. Philip: One assumes that might affect their testimony.

Miss Roberts: I assume it might affect their testimony, but it certainly makes their stay there very difficult.

Mr. Philip: I had a question concerning the jury. It seems to me

that if you are in a very uncomfortable position, human nature would be to try to get it over with as quickly as possible. Would that not very much work against the defence, that it just might be easier to say: "What the hell. If the rest of you guys think he is guilty, let him go to jail"?

Miss Roberts: We always hope on the defence side that they say: "Oh, we do not want to be here. Let him out too." The crown does not see it the same way. That is true. It is an uncomfortable situation for them and I am sure it shortens their deliberations in some cases.

Mr. Philip: I asked a question this morning and I suspect I will get the same answer from you people. It seems to me that a judge who is in a bright, open, pleasant surrounding would be less likely to be cantankerous, tough, difficult or perhaps hasty in his judgement than one who is in a hot situation where he has had to change his shirt three or four times, as was indicated earlier. Do you think being in this kind of situation affects the quality of decision-making of the judges?

Miss Roberts: Our judges have been extraordinarily marvellous. They have done very well.

Mr. Philip: I am sure you want them to know that you said that.

Miss Roberts: No.

Mr. M. J. Hennessey: I already said they were cantankerous.

Miss Roberts: No, I indicate that. But what they do is they will stop court for ten minutes, put the air conditioners on, cool the place down a bit and then come back. Really, they have worked around the system very well, to make sure that they do keep themselves--

Mr. Philip: But surely judges are human like everyone else and are affected by this?

Miss Roberts: Oh yes, and I am sure there are occasions, when it is hot, that they just say, "We are leaving here at 4 o'clock," or "We are leaving here in 15 minutes and that is it."

Mr. Philip: I have not visited your courthouse--this is my last question--but it seems to me, from reading the auditor's report and Mr. McAuliffe's description of this particular one, that if I am unfortunate enough to be caught in a fire and am on the first floor, there is no way of getting out on that first floor because the bars--

Miss Roberts: There are no bars.

Mr. Philip: There are no bars; it is simply locked.

Miss Roberts: That is right. But it is open from a quarter after eight until 4:30, so during that time you can get out the doors because the doors are open. They open them up.

Mr. Philip: During the time in which the court is in session?

Miss Roberts: That is right.

Mr. Philip: But if I am on the second floor, I have to jump down one floor, because the ladder does not go down from the second floor to the first floor.

Miss Roberts: That is right.

Mr. Philip: If I am in a wheelchair, then I guess I have to wheel my wheelchair down from the second floor.

Miss Roberts: That is right.

Mr. O'Dea: You also have to get the window open to get out on to the landing, to get to the ladder that does not go to the last floor.

Mr. Philip: Does that work?

Mr. O'Dea: They are not always capable of being opened.

Miss Roberts: They nailed them shut for a while because they were worried about us leaving them open and having rain come in and destroy the floors.

Mr. Philip: Do most of you act like most professionals and do a lot of your work on the weekend? If so, are your clients not at a great disadvantage by your not being able to go in in the quiet time, when one often would prepare a case and get at those volumes?

Miss Roberts: It is an extreme disadvantage to the younger members of the bar, because as all people are aware, an appropriate library is extremely expensive. They have to go during the daytime to get the books and take them out and some of them cannot be taken out of the library. It makes it very difficult for younger members of the bar who have not built up a library and for the older members as well to get some of the new volumes.

Mr. Chairman: Anything further? Thank you all very much. We appreciate your contribution to our deliberations.

Miss Roberts: Thank you very much for allowing us to come. This is the farthest we have ever got, and we still hope we're number 2 on the list.

Mr. Chairman: The next witnesses are from the Oxford Law Association.

OXFORD LAW ASSOCIATION

Ms. Legate: Good afternoon. My name is Barbara Legate. I am here representing the Oxford Law Association and myself. I believe Mr. McAuliffe made special mention of me in his report, so I guess I get special mention as one of the lady barristers who has to dress and undress in rather embarrassing situations in Oxford county, but I am here this afternoon on behalf of the Oxford county bar as well.

Mr. Chairman: Do you have a statement you would like to make?

Ms. Legate: I was sitting here listening to what Miss Roberts and her colleagues have had to say. I suppose the overwhelming feeling I got sitting there listening, was that the situation in Oxford is almost exactly the same except our problems are exacerbated by the fact that we do not have a washroom in our barristers' lounge and we do not have a provincial courthouse. We have one facility that houses all of our court facilities.

Our population is somewhat larger than that of St. Thomas: we service three good-sized communities and a number of smaller communities; we have a

number of major highways going through our community, through Oxford county. That gives rise to a great deal of criminal work. If I understand the crown attorney correctly, Oxford county has by far and away a disproportionate amount of criminal and highway traffic matters in its court as a result of Highway 401, Highway 2 and Highway 59. Soon Highway 403 going through the area will exacerbate that problem even further.

If I had to outline the major difficulty in Oxford county as I see it, it is that we are attempting to fit modern-day problems into a very old building. In particular, we are trying to take a family court situation that is bursting at the seams and cannot continue to exist in that court facility in its present condition.

Just to let you know, I practise family law. What I have to do when I issue a proceeding in the provincial court, family--

Mr. Chairman: Excuse me, Mrs. Legate?

Ms. Legate: Ms. Legate.

Mr. Chairman: I apologize for interrupting, but the side conversations are making it difficult for me to hear you and I would encourage members if they want to carry on a conversation to perhaps exit the room so that we can hear the witness.

Mr. Epp: It may be helpful to close the door at the back.

Mr. Chairman: That was not distracting me. It was the conversations of other members. I am sorry to interrupt, could you please continue?

Ms. Legate: I was going to tell you about the family court. I practise a great deal of family law. What happens if I want to initiate proceedings in the family court is that I go up to a room which is, I suppose, in terms of its dimensions, from this table forward, about this size. In that room are all of the files of all of the family court matters that have ever been dealt with in Oxford county.

The number of desks in that room is four. The first desk that I come to is a desk that is essentially the counter or receiving area. It generally would have in front of it a ledger card. The family court uses the One-Write system: when a husband has had funds garnisheed and the funds are paid into the family court and that payment is being paid out to the creditor wife, the support cheque is being written out on a One-Write card. If you are familiar with it, the names are all there.

When I come in, that One-Write card is sitting there in front of me and if I care to look at it, I can.

Immediately to my left, sitting on top of some filing cabinets, are some rotary card indexes. I have often been there and looked, as I am waiting for some documents to be issued or waiting for a question to be answered, and I have seen child welfare proceedings, Mr. X, name of the child, addresses, that sort of thing; everything that you would have to have on a rotary card index. That is very accessible to me.

1540

Other people who have access to that room are police officers, members

of the public, including husbands who might be coming to make support payments, wives looking for support payments, members of the children's aid society, parental support workers or people from the schools. Anyone who might possibly have any business in the family court has basically free access to that room because there is no barrier. I can walk from one end to the other if I care to. I have often used the telephone there to make telephone calls to my office. There is no privacy whatsoever. If an adoption proceeding is going on and it happens to be open on their desk, then I can take a look over their shoulders very readily.

When they described the new procedures that were to be brought in for the enforcement of custody and support orders, it was met with a great deal of laughter in Oxford county because you would have to put computers in that room. There is no room for another person to stand, let alone to put in the computers that would be necessary to operate that system. One has to wonder where all those pieces of equipment are going to go.

Right outside the family court office, you will very often find boxes and boxes containing old files or whatever material they just cannot physically put into their office space. That will be sitting out in the hallway for anyone to see.

On the second floor, where the family court office is, there is also the barristers' room, the library, the family court judges' office, the Supreme Court office, the women employees' washroom, the jury room which also doubles as the discovery examination room and the Supreme Court judges' room. As well, some of the court reporters have space up there to do their transcription. As you can appreciate, the second floor is not a quiet place, and there is a great deal of accessibility to the general public and anyone who really wants to know.

I do not believe it is a place where any sort of confidence can be kept. You have to appreciate as well that when you are dealing with a community the size of Woodstock in Oxford county, the need for confidentiality is very great. You are not a small person lost in a large community, such as London, Toronto or Ottawa; you are an individual who has an identity in the community. For the rest of the community to know your identity and your business could be extremely upsetting and embarrassing.

We have a number of problems in Oxford county that they have in St. Thomas that you have heard about. The most difficult of those is that if you were to come into our courthouse in Woodstock at about 9:30 on Monday morning, you would see a very good example of what the crowding is all about. I do wish that the members of this committee could go there next Monday morning when we have the Supreme Court in session. You will see the jury panel milling around up on the second floor, witnesses and counsel being called for the first cases and police officers. That is just in connection with the Supreme Court.

Downstairs, you will have the family court. The family court will have been in session since nine o'clock in the morning. At nine o'clock there are motions heard on the second floor in the judge's office. He does not have a motions courtroom, so he holds motions in his office, per se, where he robes. All those individuals will also be milling about that area.

Downstairs, the family court proper will be waiting to be called into session, and it is called into session at 9:30. You will have all the children who are being brought before the courts in child protection proceedings waiting their turn, the social workers and lawyers in connection with those

cases, the parents of those children, potential foster parents, and other witnesses involved in those cases. As well, you will have private adoptions; people who just happen to be adopting a baby or a child from some other situation, not to do with a protection proceeding, but just a run-of-the-mill adoption. Those individuals will all be there.

The next thing the judge will deal with--but again, they are all called for 9:30--is the young offenders, formerly juvenile delinquents. Some of those young offenders may be in handcuffs, some of them are not going to be, but none the less, they are all milling around together.

Dealt with that morning as well will be individuals who are there simply to enforce a support order, obtain a support order, enforce or obtain a custody order; to conduct business of a very mundane nature before the family court. All these people have to mill together out in the halls.

You may also have the unfortunate circumstance of the district court being in session at that point in time. Typically, the district court in Oxford county ends up in a very small courtroom. In my view, Judge Misener, who is our district court judge, bends over backwards to accommodate counsel and to accommodate the individuals who come before his court, because, I believe, his view is that the individuals who come before the court should be properly treated. That sometimes means the district court judge ends up in a very small courtroom, and he is sitting at the same time as all these other courts.

Come next Monday morning, I suspect he may be hearing a criminal matter or a civil matter in a very small courtroom; the family court will definitely be in session and the Supreme Court will be in session. There will be hundreds of people in that courthouse. It will be a veritable madhouse on Monday morning, and I wish some of you could go there and see what it is going to be like.

In among all this cacophony, you will see duty counsel. Duty counsel are going to be attempting to give advice to individuals in this circumstance. For starters, duty counsel operates in Oxford county provincial court out of the county council chambers. We share facilities with the county. So the provincial court will be operating out of the county council chambers. It is not really set up as a courtroom, but it is adequate.

Off to the side are the infamous rooms you have no doubt heard or read about where criminals have, on more than one occasion, jumped out the windows. It is in those rooms where duty counsel have to interview the client, obtain instructions, go back out into the hallway, call for the next person on the list, if you can be heard, take him back in, interview him--and this is just off the courtroom, mind you. It would be like going through that door off to my left, interviewing the individual, trying to give him some kind of advice and coming back into the courtroom looking for the next individual.

It is a very unsatisfactory situation. For me, speaking as a lawyer, attempting to give someone any kind of reasonable advice is extremely difficult.

On Friday mornings when family court is in session, it is before the clerk and it is a first-call court, an assignment court, and typically that is a less busy day. I will go out in the hallway myself, call individuals' names and do much the same thing as Miss Roberts was describing, find a secluded spot at the end of the hallway underneath the stairwell, usually. I will sit

on the window-sill with my client or use that as my table, where I will make notes, take a short history and attempt to dispense some kind of advice as duty counsel.

That is the same situation I have if I am meeting my client on Tuesday mornings for chambers.

I am sorry. Before I move on to Tuesday, let me stick with my Monday for one more item. There are also bail reviews, bail hearings, over the course of the week, and obviously, one or two people will get collected up and you have to have a bail hearing on Monday morning. That takes up one other courtroom.

I want to take a moment to describe this one other courtroom to you. I have told you what one of the facilities is like. The courtroom the district court judge uses more often than not, in my experience--this is only my personal experience; I have had more trials heard in this small courtroom than I have in the large courtroom--is what he usually uses as chambers.

To give you a physical description of it, I would say it is half the size of this room, dividing it along here and forward of these desks. That is the room in which the district court holds its normal hearings. They would like to use the Supreme Court, and it may be my misfortune that I have not gotten to use the Supreme Court courtroom upstairs, which is large and spacious and a traditional old courtroom. But, very often he is forced to use that particular room and I do want to come back to a specific incident that will be happening this week that I think is appalling and a good example of how justice can be miscarried in this county.

In any event, that room is where the bail hearings will be held on Monday mornings and often on Friday mornings. I might like to make use of that room, if I could, to interview my witnesses, to dispense duty counsel advice, to gain some privacy. For example, in a situation where I am representing a child who has been apprehended by the children's aid society, has been removed from the home by the children's aid society and I want to quieten them down before they go into the courtroom, tell them a little bit about the procedure, make sure that the child--10 years of age or over is what we are talking about, they have to be brought before the court. I would like to have a quiet place where I could take that child. If it is a Monday morning, I cannot because bail hearings are being held and there is not going to be a quiet place for me to take this child.

Similarly, another type of individual that I represent on Monday mornings that I would like to have a quiet place to take away are women who have bad relationships with their husbands because they have been physically abused by them. These women do not want to see their husbands; they do not want to talk to their husbands.

Let me paint for you a scenario that is not unusual. I find in the case of a woman who has been abused by her husband, and we are taking him back to court for not the first time, but maybe the fifth time, to encourage this man or attempt to force the man to pay the support that he has been ordered by the court to pay, I will have the woman standing beside me and I can see that she is starting to glance around. I say, "Is your husband here?" She will say, "Yes, he is standing over there" and he is staring right at her. He is attempting to intimidate her. I will take my client and we will walk around the corner. It is in a U shape, as many of the older courthouses are. We will walk around the corner. There is nothing to stop him from walking around the corner and attempting to stare her down again. It is a very unsettling

situation and not suprisingly a lot of women give up trying to enforce their support order simply because they do not want to go through the intimidating experience of having to face these men in the hallways staring them down.

I would much prefer to go to Middlesex county. I have had the pleasure of practising in their family court there and the other levels of court and it is much more comfortable. If I have a woman who is in that situation, or if I am representing a child in a child protection proceeding, there are a number of rooms and places that I can take them to get them away from that particular pressure. As you can appreciate, the pressure of appearing before a court is great enough without having to impose that upon them in addition.

Moving on to Tuesday. Tuesday mornings the judge will hear matters in the small courtroom that I have told you about. It is courtroom 4. Courtroom 4 cannot hold everyone that would have to be in there so you have to wait out in the hallway. Just last Tuesday I missed having my case heard and had to wait for the judge to come back from coffee because there was not enough room in the courtroom for everybody to sit in there. There is no court constable at the door letting people in and out or giving you any indication of the state of the list.

The judge in getting to his courtroom on Tuesday or Monday, must walk through the corridors full of people as I have described to you. It is the same situation as in St. Thomas. I cannot quote to you a situation as has happened to Ms. McGowan, the crown attorney in St. Thomas, where someone has been intimidated as that crown attorney specifically has been intimidated, or that the judge has had someone make comments toward him, but I know that has happened to me so I can suggest to you that if it has happened to me, I am not in the courthouse as often as the judge is or as often as the crown attorney is, I would suspect very strongly that it might have happened to them.

None the less, as I have described this courthouse to you, it is in a U shape. The crown attorney has to go from one side of the U to the other to get to the rooms that are used as a provincial court. The provincial court judge has to go all but a few steps around the U to get to the provincial court. The only place for the accused, the witnesses, the lawyers, the duty counsel, everyone, to stand while they are waiting for the judge to go into the courtroom is out in the hallway he has to go by.

If the judge wishes to use the washroom, he gets to use the men's washroom on the main floor and that is just before you get to the courtroom. There is nothing right beside his office. If the family court judge wishes to use the washroom, he must go from the second floor down to the first floor and use the same men's washroom.

I cannot speak for the judiciary but it seems to me that the situation, from their point of view, is very inadequate, unsatisfactory and totally lacking in any degree or type of security, especially when one considers that they walking past are on a regular basis the very people they are going to have to find guilty or not guilty and decide whether they are going to go to jail or have some other penalty imposed against them.

I would like as well to speak for a moment of my own situation as a barrister practising in a community serviced by a courthouse such as the one in Woodstock. The facility was built well over 100 years ago. Admittedly, there were not too many women practising law back then and I suppose the day it was built there was none. I have to put up with the fact that the facilities still accommodate barristers as if there were none.

In the courthouse in Woodstock there is one door that I have a key to, to the barristers' facility. When you walk into that facility, there are a few lockers for the barristers. There is a carpet that has been taped up with carpet tape so many times that you have to watch your footing when you walk in or you will trip over it; it is just absolutely threadbare. There is a couch in there that has had a sign on one end that says "Please do not sit on this end." It has been there as long as I have been practising. I now am in my seventh year of practice and I add to that my year of articles in Oxford county.

Then, if I want to use the library, I have to enter the library from that barrister' room and then I get into the library proper. All the knobs have been taken off the other entryways to the barristers' lounge to create some kind of security--I believe this is the reason--for the library, so the books are not stolen. There is also a telephone in the barristers' lounge and I suppose it has something to do with the use of that telephone.

In any event, there is one entry and that is all I have ever known there to be. There is one entry into the barristers' lounge and therefore into the library. From the point of view of a woman who is a barrister--I am not a solicitor; I do just courtroom work--if I want to do any kind of research, I have to enter the library through the barristers' lounge. If there is a man robing in there, I have two choices. My first choice is I enter anyway and go get my book or I wait and come back another time.

When I started out practising, I deferred to some kind of feeling of my own sensibilities and the sensibilities of the men who would be dressing and undressing in that room and chose to wait. I then started writing letters to the Ministry of Government Services and received responses from the Ministry of Government Services saying: "Yes, you are absolutely right. This is a terrible situation and it will be redressed." I believe the response I got was that construction would begin in January 1983.

Nothing has been done to date. In that it did not bring about any kind of response, I thought, the heck with it, I have to get into the library. I have a business to conduct and I cannot wait around for the Ministry of Government Services or the Ministry of the Attorney General to do something about this. Frankly, in the back of my mind I thought maybe if I embarrass some older barristers who have a little more pull than I do, something will happen.

Quite frankly, I think I have embarrassed one or two men, unfortunately barristers from out of town whom I do not know very well and who do not have any idea who I am, by strolling in on them when they are mid-dress. There is one barrister in Woodstock who got quite used to me. He will unzip his pants in front of me and yank out his shirt, and I have seen his bare stomach, large as it is, innumerable times. We will just have a little chit-chat about what his case is about and what my case is about, and we just take it as given, that this is what I have to put up with and that this is what he has to put up with.

1600

Mr. Philip: Is your opening salutation, "Good to see you again"?

Ms. Legate: No, it is usually, "My, how you have grown."

Mr. Philip: I would not do a follow-up question to that one.

Mr. Gillies: I hope this particular barrister is not the local member.

Ms. Legate: He is not the local member, no.

Mr. Epp: I hope they are not taping this on a videocassette recorder.

Ms. Legate: For my own situation, I choose not to embarrass my colleagues by changing in that room. What I have chosen to do, since I am within five minutes walking distance, is to change in my own office, save and except my gown and my tabs, and I come to the court essentially half gowned. My understanding of the rules of etiquette is that this is entirely improper, that I should be gowning only in the courthouse and I should only be seen in my gown or parts of my gown in a courtroom or chambers, that it is entirely improper for me to be parading down the street partially robed. I have had to make the decision. If somebody is going to report me to the discipline committee because I have to walk from my office to the courthouse partially robed, so be it. I do not think anybody is going to make that complaint against me, yet it begs the question, why should I have to put up with that when a male barrister does not?

One of my colleagues happens to be here with me today. She practises out of town. When she comes into Woodstock, her solution, and what I believe to be the solution for most out-of-town women counsel is that in the past she has gowned in the sheriff's vault. The vault is rather spacious and there are no windows, so they can go into the vault and tell the local registrar there is a woman in there and nobody can get files out for a few minutes. She gets her gown and robes on and out she goes.

The other solution is to use the female staff bathroom. I have done that. The reason I abandoned it and now robe in my office is this: The Ministry of Government Services has received a particularly scathing letter from me about this. One Friday evening, Judge Misener, who is a very hard worker, kept me typically late in court. It was gone six o'clock. I went to get my civilian clothes out of the washroom and the washroom was locked. I do not have a key to the ladies' staff washroom. I understand I am not entitled to one. All the offices were closed. The family court office, from which I usually get the key, was closed. Everybody was long gone. It was the weekend and I thought: "All of my clothes are in there. My purse is in there. I cannot even open up my car to drive home."

I went scurrying around the courthouse and luckily the judge's secretary was still there. She had a key and was able to let me in. But for the fact that she had hung around and was having a conversation with the judge, I would have had no way to get into that room unless I could have scared up the custodian to the building.

That is generally how we cope with after-hours problems in Oxford county. The custodian lives in a home immediately adjacent to the courthouse, so if he does not mind being disturbed and you do not mind disturbing him, you can gain access to the courthouse and get in and out that way. But typically, we put up with the same situation as was described in St. Thomas. If you want to get in and out of the courthouse to do research, you do it during office hours. Otherwise, it is such a colossal pain in the neck to get simple access to your law library that it is not worth it. You rely on your own library facilities.

We do not have the handicapped problem in our courthouse that they have

in St. Thomas. An elevator was installed a few years ago, primarily as a result of the efforts of a barrister, Mr. Hutchinson, who only has a wheelchair to get around in. He could not do divorces. He was a family lawyer but he could not get up to the second floor to do divorces. Basically, other lawyers helped him up the two flights of stairs it was necessary for him to scale.

The situation I want to tell you about, which will be occurring this week, is as a result of this situation. The Supreme Court assizes that take place in Oxford county are starting on Monday. They will last for two weeks. There are district court hearings going on, trial of matters scheduled some months ago. I am directly involved in one of the cases in that one of the victims is a child I represented in child protection proceedings. Her father, the victimizer, the accused, is coming up for trial. The room I believe this matter will be tried in is courtroom 4, the one I described to you that would start from here, go over and then up.

What is in that room? About one quarter of that room is taken up with a dais area. It is a small stage with a bar in front of it and the judge sits behind that bar. To accommodate properly all the trappings you need to have a district court trial, there is a desk set up for the clerk and the reporter. There will be a stand for the witness to stand in front of, and then there will be a table, which I estimate will be two thirds the length of the two tables I am sitting at. At that table will be the accused, defence counsel, crown, perhaps a police officer, or depending on the crown attorney, it will be the victim who is sitting there.

I have had many trials under those circumstances in that courtroom in the district court simply because Judge Misener is willing to put up with it. By the way, the provincial court judge will not put up with it. A comment was made earlier by Mr. Philip, "What if the judiciary and the barristers failed to show up?" Judge Webster made it clear on a number of occasions a number of years ago that he just was not going to show up in those circumstances, and it resulted in trials being held in hotel facilities, at a hospital auditorium and in council chambers in the city hall.

None the less, this trial that is going to be taking place in Woodstock this week involves a child who has been sexually and physically assaulted by her father. She will be in this very small room for the entirety of the trial and her father will be there. I have spoken to the crown attorney who will be coming in from London about that and described the room to him. He was familiar with it and said: "We simply cannot have that. I cannot conduct a trial under those circumstances. That is so grossly unfair to that particular child." I have to agree with him.

There is no way you can put 10 police officers, if they would fit, in that room and make that child feel any better. It is not that she is feeling insecure for her personal safety, that she thinks her father is going to haul off and hit her. It is the emotional intimidation of having an individual who assaulted you, who did something wrong to you, in that close proximity to you when you are finally bringing the matter before the courts. I consider my client to be a very brave young woman to take the matter as far as she has. She has coped very well with the police, the crown attorney, me and the whole process she has been required to be put through, but to ask her to take this last step in such close proximity is incredibly unfair, and in my view, a real travesty of justice.

Mr. Philip: How old is this child?

Ms. Legate: The assault took place when she was 13 and she is 15 years old now.

Mr. Philip: So she is still pretty young.

Ms. Legate: Absolutely. She loves dangly earrings and every once in a while she will have three different colours of nail polish on her fingers when she comes in to see me. She tells me about her volleyball games and things like that. She is a young girl and she is recovering very nicely from a very bad situation, but I do not believe she should be made to put up with what she is going to have to put up with next week unless another situation can be found for her.

In Woodstock, my personal view and the view of the members of the bar you can elicit an opinion from about the type of facility we need is that we need a centralized facility. I think that has a lot to do with the nature of practice in a small community. Most of us cannot afford the luxury of practising just family law, criminal law or law in the district courts and higher. We have to practise in a number of courts. I remember having a conversation with one of my colleagues who said, "Maybe what they should do is put the provincial court offices downtown somewhere, and then we would just leave this for visiting judges and the district court."

1610

I said, "But what are you going to do? I remember innumerable times sitting in provincial court on Monday morning and your name is being called because you are in district court or you are in Supreme Court or you are in a motion, and what happens is another lawyer is sent out to try to find you. Can you imagine what would happen if you were three blocks away or five blocks away? It would be impossible to conduct your practice." He agreed.

That is the nature of a small town practice. It is varied. You have to have ready access to the registry office because you are going to do real estate. You have to be close by the sheriff's office, the local registrar's office and all the court facilities because you cannot afford to super-specialize, unless you join a large firm.

I would like to speak also to the issue of what we have been promised. I think I alluded to that earlier this afternoon. I was told specifically by the Ministry of Government Services three or four years ago that construction would have started in January 1983. We have been shown innumerable blueprints and plans of proposed changes to the courthouse facility that we have not. I think what happens, and the belief in the bar in Oxford county is, "If they build up enough flak and if we hear enough rumblings we will send down another blueprint and hope that will keep them quiet for a while."

Since I have been practising, I have seen, I believe, three different sets of blueprints and I do not believe I have seen them all. The last set of blueprints was interesting because it provided for a washroom with absolutely no head clearance. If you tried to stand up from the toilet, you could not because--well, you just could not; there was not enough head clearance. Someone is not putting a lot of thought into those blueprints. They do make a very good show of sending them down to us. "Please come back with your comments." Then they seem to disappear into thin air. We do not really hear back from them.

I think it is as a result of that experience that you see me sitting

here by myself today. There is a great deal of apathy in the county of Oxford and a great deal of disbelief that anything will come of the complaints we have been making for years about our county facilities. We know that barristers coming in from outside the community complain ad nauseam about our facilities. It is a beautiful building. It is a lovely structure from an architectural point of view. But it is totally unworkable. It is not a functional building. It is something we have given up hope on.

The Attorney General (Mr. Scott) did meet with the bar a couple of weeks ago. I was interested to hear the comments from St. Thomas about the list. The Attorney General indicated there is no such list. He is attempting to put together such a list, but that was his very clear statement, that the true fact is there is no such list. We were given indications by the Ministry of Government Services that there was in fact a list, that we were very close to the top of the list. "Just wait; it is imminent." We were not given to believe that it was within five years or two years; it was "imminent." That is what is constantly put before us.

I believe those are the main points I would like to draw your attention to.

Mr. Chairman: You indicated an interest in asking questions, Mr. Epp, and then Mr. Philip.

Mr. Epp: I appreciate your comments very much, Ms. Legate. With respect to the list, as I understand it there is a list that was made up some months ago, prior to the Attorney General making a statement whereby he has indicated that he is going to circulate or has circulated, I think, to all members of the Legislature as well as to other members in the province with regard the needs of the local bar association and for the courtroom facilities. I think some report is supposed to come to his attention some time in November. It may be that the list you are speaking about is no longer in operation because of this new list is supposed to be developed. It may be because of that rather than the fact that there--

Ms. Legate: That could be the case. I am really parroting what I have heard.

Mr. Epp: I do not whether you got a form but I know I got a form and other members I think have forms to fill out regarding the local needs of the court facilities and so

Pl615 follows

Ms. Legate: That could be the case. I am just parroting what I have heard.

Mr. Epp: I do not know whether you have a form, but I know I have a form and other members have a form to fill out regarding the local needs of their court facilities and so forth. I am not sure what I am supposed to do with it. You are in a much better position to fill out these things out than the local members of the Legislature, but I am sure those questionnaires are also going to other people.

Mr. Philip: I would like some clarification on the list, because it is a rather interesting point that you just brought up. If we are getting different kinds of messages, I am wondering whether the Provincial Auditor would look into that.

Is there a list? Some of the people appearing before us seem to think that there is, some of them seem to think that they have been told they are on a certain place on that list and none of them seems to know exactly how you get from fifth place to second place on the list, or whatever. We have to ask what criteria are being used to develop that list. How objective are they? Can we actually look at them and measure them?

Could any of us sit down with the criteria, in an objective way, and come up with the same list as the Attorney General may be announcing? I am wondering if the Provincial Auditor would examine the evidence that we have had in these two days of hearings and see if we can get some answers as to exactly what that list is.

Can you answer this question? Is it the feeling of your bar association that the present courthouse is not redeemable as a courthouse? In other words, perhaps it could be reconstructed into some other facility, but it is just not practical for the purpose for which it is now being used.

Ms. Legate: I believe the first answer would be that we would hate to give up our courthouse because it is so beautiful; but the real answer would ultimately be, yes, obviously it is just not workable. Any solution to deal with that particular facility would be very short term.

Mr. Philip: You and your colleagues have seen at least three sets of drawings. Are the drawings for reconstruction of the existing courthouse, not for the building of a new one?

Ms. Legate: No, it is all reconstruction.

Mr. Philip: It is your position and, you believe, the position of your colleagues in that area that, having examined those blueprints, they are just not practical in terms of being a useful facility?

Ms. Legate: I believe that it would be a very short-sighted thing to do. It might cope with the situation as it existed in 1985 and the numbers of people using the court facilities then. It would leave absolutely no room for expansion, none whatsoever.

Mr. Philip: I know you are not an architect and you may not be a historian but, as a person who lives in the community and talks to the community leadership, do you feel there would be other uses that courthouse could be put to in order, at least, to save something that is of architectural value, which is what you are saying, but at the same time not use it as a courthouse?

Ms. Legate: My own view of the courthouse, and this is simply my own view I am expressing right at the moment, is that the main courtroom should probably still be used as a courtroom, simply because when you step into that courtroom, you believe and feel that justice is being done.

It is an elegant room. It was built in the heyday when justice really meant something, and I think something is lost in the more antiseptic rooms of the brand-new courthouses that exist in places such as Middlesex. They are nice courtrooms, but they cannot give you the feeling of law being dispensed as that Supreme Court courtroom can.

My own view is that it should be retained as such, and that is about all you could do with it. Maybe you could put little theatre on in there. I do not know.

Mr. Philip: Are you saying to retain it as a museum?

Ms. Legate: Essentially, that is all I see its being retained as. To tear apart the second floor and take away that courtroom would be a shame. Historically speaking and from an architectural point of view, I believe that would be a real shame. But I do not know what you would do otherwise.

Mr. Philip: Does the local historical society have some views as to what could be done with the building?

Ms. Legate: I am not aware of it.

Mr. Philip: You do not know whether they have commented on it?

Mr. Barlow: The report says it is designated as an architectural building.

Ms. Legate: I believe that is true, but I do not know of another use that has been suggested for it.

1620

Ms. Legate: I believe that is true, but I do not know of another use that has been suggested for it.

Mr. Philip: One last question: In terms of your concern for the psychological wellbeing of that 15-year-old child who is obviously going to be placed in a very stressful position on Monday, the crown attorney has agreed with you. What happens on Monday morning? Do you have to present your position to the judge, and then he may or may not say, "I refuse to hold court here under the circumstances," or what happens?

Ms. Legate: This case is not being held on Monday morning; it is on April 2, which, I believe, is Thursday. All this will be taking place throughout the next week. The Supreme Court will be there all next week.

A number of solutions may present themselves. If the Supreme Court list collapses, then the Supreme Court judge can go home. Then the Supreme Court courtroom can be used for the conduct of that trial. If the crown attorney is able, with the court administrator, who, I believe, will be the local registrar, to secure other space in advance of that date, then that other space will be utilized. That is what he was going to attempt to do. My last personal conversation with him about it was that he was going to make some telephone calls and see what he could do.

Mr. Philip: So you try to find a Holiday Inn, a school or something like that, that would be--

Ms. Legate: Those are some of the options. Generally speaking, we use a Quality Inn out on the highway, if there is a room available there. I have had child protection proceedings out there, and I would not be surprised if the district court was forced to sit out there.

The hospital has also been used. There is a bit of a rigmarole and some red tape you have to go through to do that. It may be that they will have to bounce another trial out of the county chambers in order to use that room, but

if the county is using it, typically it will not give it up. It is too darned bad if somebody else wants to use that facility to conduct a trial.

The only other solution available to the crown attorney that I can think of just offhand is an adjournment. To adjourn that case again would be far too stressful, given that the incident that gave rise to it was in September 1985, that the protection proceeding was dealt with in the winter of 1986, that it was scheduled for trial last fall and has already been rescheduled to this date, when the child has been all geared up and prepared to go to trial. I think in that case the crown attorney would be forced on because the stress in making the child wait months and months until a courtroom is available would be worse.

Mr. Philip: Do I take it that this is--

Interjection.

Mr. Philip: One last question.

Mr. Chairman: We are going to adjourn in five minutes. Two more members have indicated an interest. If we have a few minutes, maybe we will come back to you.

Mr. Hennessy: I have a short question. Mr. Philip mentioned the waiting list being like the Academy Awards. Thunder Bay was on that list. When their time came, they were going to get that passed (inaudible) promised land. Then they were taken off the list when a re-evaluation was taken. I think this is more or less a gimmick to some extent. They say you are next in line, but the line seems to evaporate when your turn comes. I am as much concerned as you are about this so-called listing, whatever it is going to be, whether you are one, two or off the list. I would appreciate an answer on that.

Mr. Barlow: I have a very brief comment, as opposed to a question to the witness. From the architectural point of view, I would make the comment that Cambridge, or Galt as it was in those days, renovated the city hall and made a very useful building out of a building built in exactly the same year as the St. Thomas courthouse, 1852, a very functional office and council chamber. A lot can be done with a proper restoration architect to maintain what is there now. Who knows? They cannot move the walls out to make it any bigger but--

Ms. Legate: It is not a question of making it bigger; it is a question of utilizing the space that is there.

When the Attorney General was in Woodstock a couple of weeks ago, the mayor was sitting beside me, the warden was sitting across the table and the president of the law association was sitting talking to the Attorney General. It was interesting to listen to the conversation going on between the mayor and the county warden, because neither one of them really wanted anything to do with this building any more. The county wants out of there, and the city obviously does not want anything to do with it.

I do not think it is a functional building from a courthouse point of view, and it is going to be difficult to come up with someone who wants to spend the money on it. The county already has spent an outrageous sum of money in restoring the exterior of the building and totally refurbishing the basement to put in offices. They have done an admirable job. It was just a cave of a basement before and it is a very nice office facility right now. It

is one of those buildings that has very wide, high corridors. It would take someone with a lot more imagination than I have to know what to do with it.

Mr. Barlow: It takes a special kind of architect who is familiar with it.

Mr. Epp: You made a statement earlier, and I thought you might want to elaborate on it a little, because you may have left the wrong impression. You said the building was built when justice really meant something. I do not think you want to leave the impression that justice does not mean anything today.

Ms. Legate: Absolutely not. How do I want to put that? When justice was done in a much more elaborate way and in a much more formal way than it appears to be dispensed now. I must say in a place like Oxford county, the cattle herding, the quick justice that has to be given to people in the circumstances it is given is bringing the administration of justice in this province into disrepute. I honestly believe that. You can hear the people grumbling out in the hallways. I have invited you there on Monday morning and if anybody can come down, he will hear it.

Mr. Philip: Do I take it that the case you have described and that I was asking questions on is not an isolated case? It may not necessarily be a child molestation case, but there are other cases, fairly frequently, when you have people who are intimidated because they have been mugged, brutalized or assaulted by someone and they are acting as a witness or, in the case of family court, where one of the parties may have been assaulted by her estranged husband. Is this fairly frequent?

Ms. Legate: That small courtroom is overused. It is used for trials on too frequent a basis. If it is a district court matter, ironically, the district court in Oxford county ends up using that office--it is more like an office--or that room more frequently than the provincial court simply because the provincial court judges refuse to use it. They will delay the dispensation of justice rather than use that particular room, and I think it is because they deal with those kinds of sensitive issues. This matter happens to be tried in the district court, so it is available.

Mr. Philip: So someone could be in jail wanting longer for a trial in your county than he would in some other area because the judge will not use that small courtroom?

Ms. Legate: I do not know that I would want to make so sweeping a statement, in particular with regard to someone who is in custody pending trial. I cannot point to a situation where that happened specifically. Certainly, the family court judge will not use that room. The provincial court judge, criminal division, does not like to use that room. That leaves it to the district court judge to say, "I guess I will use it."

Mr. Gillies: If we ever get an opportunity to look at a larger sample of these court facilities, there seems to be a consistent pattern with those that are leased by the province from counties and municipalities. The ones we have heard about all seem to have problems in meeting the fire code standards. I would be most interested if the auditor could ever do an inventory of those facilities around the province and see if that is the case right across the board.

Mr. Chairman: I think the Ministry of Government Services might want

to take a look at the rental. They are paying \$14,000 plus a month for this particular facility, which seems truly exorbitant to me.

Ms. Legate, thank you very much for taking the time to be with us today. We appreciate it very much.

I will ask members to stay around for one minute, please. The reports we are going to be dealing with are the courthouse and Graham Software. Mr. Malcolmson would like some direction from the committee as to whether we should be looking at a separate report for Graham Software. It is my feeling that we should be.

Interjection.

Mr. Chairman: Separate from our reports. It is a separate, individual report.

Mr. Gillies: Separate from the auditor's report.

Mr. Chairman: The committee report. Yes. Fine.

The committee adjourned at 4:28 p.m.

FEB 10 1993

3 1761 114671225

